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VOLUME III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 306

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

UNITED STATES, ET AL.

No. 307

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

FILED AUGUST 9, 1960
PROBABLE JURISDICTION NOTED OCTOBER 17, 1960

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APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

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[fol. 1122]

Transcript of Proceedings, November 11, 1954

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Merrill: We are ready to proceed, Mr. Examiner.

Exam. Dishman: Call your next witness.

Mr. Merrill: We will call Mr. Flynn.

JOHN F. FLYNN was sworn and testified as follows:

Direct examination.

By Mr. Merrill:

Q. Will you state your name, please?

A. John F. Flynn.

Q. What is your address, Mr. Flynn; your business address?

A. 30th and Oak Park, Berwyn, Illinois.

Q. By what company are you employed?

A. The Berwyn Lumber Company.

Q. Is the Berwyn Lumber Company engaged in the wholesale or retail lumber business?

A. We are engaged in both the wholesale and retail lumber business.

Q. Do you have any retail yards?

A. We have a retail yard in Berwyn.

Q. Where is Berwyn located?

A. It is a suburb directly west of Chicago.

Q. Within the Chicago Switching District?

A. Yes, sir.

Q. What is your position with the Berwyn Lumber Company?

[fol. 1123] A. I am the traffic manager.

Q. How long have you been traffic manager for the Berwyn Lumber Company?

A. For the past ten years.

Q. By what railroad is the Lumber Company, the Berwyn Lumber Company served?

A. It is located on the Illinois Central.

Q. Is that the only yard the company has?

A. At the present time, it is the only yard we have.

Q. In your wholesale lumber operations, what is your sales territory?

A. The sales territory consists of the States of Iowa, Wisconsin, Illinois and eastern territory, the states of Ohio, Pennsylvania, and as far east as New York. Now, we sell beyond that. In fact, we sell anywhere in the United States to our contractors, depending upon where their jobs are, but our real source of business lays in the middle west.

Q. In what types of lumber do you deal, Mr. Flynn?

A. We handle practically every type of lumber that is native lumber, such as fir and larch, Ponderosa pine. We have spruce from Canada. We have yellow pine from the south. We have pecky cypress from the southeast and some spruce from eastern territory, eastern Canada.

Q. Do you obtain any lumber from the territory served by the S. P. and S.? Or the Oregon Electric or the Oregon Trunk Railway?

[fol. 1124] A. Yes, we do. We buy quite a little lumber up in that area.

Q. What kind of lumber do you buy in that area?

A. Fir lumber.

Mr. Rockwood: Straight fir?

The Witness: We buy straight fir from the West Coast. You are speaking of that?

Mr. Rockwood: Yes. You are referring to the area on the Oregon Electric.

By Mr. Merrill:

Q. In the last answer did you include the lumber which you purchase from the Oregon Trunk Railway territory?

A. From the Oregon Trunk Railway territory, yes. Yes, fir lumber up in that area. That is all fir.

Q. Approximately how many cars a year of lumber do you obtain from stations along the S. P. and S. or the Oregon Electric Railway Company?

A. Well, it would be, I would say, about 120 cars, maybe

125 cars to date. Of course, our big buying,—we buy heavily in the last two months of the year for the purpose of stocking our yard pretty heavily, but to date I would say about 125 cars.

Mr. Rockwood: In the year 1954?
The Witness: In the year 1954.

By Mr. Merrill:

Q. Those are principally cars of fir that you are speaking of now?
A. That is right.
Q. Would you designate the origins along the S. P. and [fol. 1125] S. or Oregon Electric where you obtained such cars?
A. Well, up on the Oregon Electric, we buy at Eugene, Lebanon, Wellwood, Harrisburg.

Mr. Rockwood: Slower, please.
The Witness: I am sorry. Salem, Oregon, Junction City and Waterloo and over on the S. P. and E. we originate cars at Vancouver, Washington, and we have a source over on the Oregon Trunk which is at Sherar, Oregon.
Mr. Rockwood: Sherar?
The Witness: Yes, sir.

By Mr. Merrill:

Q. Does the source of your supply of lumber include points on the Santiam Branch?
A. Yes.
Q. Of the Oregon Electric?
A. Yes, they do. Wellwood is a point, and Waterloo and Lebanon, I would say.
Q. Now, do you know what routes are available to you to points east and south of the Minnesota Transfer via Spokane from origins on the S. P. and S. system?
A. Yes, we have a route through the Minnesota Transfer in connection with the S. P. and S., the Great Northern or Northern Pacific to the Transfer, and connections, and we have another route up there that permits us to go direct

in connection with the Milwaukee, but we are pretty restricted.

[fol. 1126] Q. Well, let us see now. Is that Milwaukee east of Spokane that you are referring to?

A. East of Spokane, yes, sir.

Q. *Is there another route that you have in connection* with the Union Pacific and Milwaukee?

A. Yes, through the Marengo Gateway.

Q. Which of those routes are you presently using to supply your customers south and east of Minnesota Transfer?

A. We are using the S. P. and S., the Great Northern or Northern Pacific to the Transfer.

Q. Why is that, Mr. Flynn?

A. Well, that is because we have seventeen salesmen out on the road selling, and I have to be in a position to sell those cars and to divert them to the customers anywhere they are; where they sell a car. If they only sell a part of the car, we will bring the rest of the car to Berwyn, if necessary.

Q. Are you able to do that if you use the Milwaukee Road from Spokane east to the Transfer or to the points beyond?

A. Yes.

Q. But if you use the Milwaukee Road from Spokane are you able to divert freely?

A. No, I can go to certain points but that is it. It is all right if you have a sale of a complete car, but if we tried to stop a car off for very long periods and say, bring the balance of it to Berwyn, well, we would be out of luck. We [fol. 1127] wouldn't have that outlet.

Q. You have before you a copy of Exhibit No. 9, do you not?

A. Yes, sir. I think that is it, yes.

Q. And, from the Santiam Branch, which is shown in red on that exhibit, do you now have joint through rates from the Santiam Branch origins which are local to the S. P. and S. system to points on the Milwaukee Road?

A. Yes, Sanborn and Buck Grove, Iowa, yes.

Mr. Rockwood: What is the second one?

The Witness: Buck Grove.

Mr. Merrill: Sanborn and the second one was Buck Grove.

The Witness: Yes.

Mr. Merrill: If we may go off the record just a moment, Mr. Examiner.

Exam. Dishman: All right. Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Merrill:

Q. Now, then, you have got no joint through rates available to you from those origins I mentioned to those destinations on the Milwaukee which I mentioned, via any route at the present time, is that correct?

A. Not at the present time, no, sir.

Q All right, sir.

A. Not at the present time.

Q. Do you have any customers in that area?

[fol. 1128] A. Yes, we do.

Q. Could you name any towns where they are located?

A. Yes, I might list some of them.

Q. All right.

A. Hull, Iowa and Rock Valley, Iowa, and Sanborn, Iowa, Wesley, Iowa— No. I think that is O'K. Wesley is all right. That is east of that line.

Mr. Merrill: May I point out to the witness where this location is that he is dealing with here now?

Exam. Dishman: Yes.

The Witness: I am speaking of these points right in here. We have points in here.

By Mr. Merrill:

Q. You have these points (indicating)?

A. Yes, sir. Rock Valley and Hull are very good examples, I should say. We sell those people.

Q. Have you any occasion to utilize partial unloading privileges in connection with your shipments?

A. In Iowa, yes. Yes, we do.

Q. Are you able to originate any traffic from any S. P. and S. system origin via the S. P. and S., or its subsidiaries, for any destination on the Milwaukee Railroad west of Clear Lake?

A. No.

Q. Just a moment, Mr. Flynn. Strike Clear Lake. West of Mason City, Iowa, or Sanborn— Let me start the whole question over again. Do you have the privilege of partially [fol. 1129] unloading shipments at any destination, Clear Lake, Iowa, and west, or Buck Grove, Iowa, and west, and then moving the shipment eastward to any points shown in red on Exhibit 9 or to any point off of the Milwaukee Railroad, which originates on the S. P. and S. system?

A. No, we can't do that.

Q. You can't do that?

A. No.

Q. Is that a privilege which you would desire to have?

A. That is right, that is what we are trying to get.

Q. Do you have any customers in the area of Clear Lake, Iowa, and west?

A. Yes, sir.

Q. Would you name some of the towns where you have those customers?

A. Well, even at Clear Lake— Do I have to name the companies?

Q. No.

A. I would prefer not to.

Q. Just name the towns?

A. Garner, Britt, along in there; all that line in there. We are putting out lists with the salesmen in the area, and to what points they would have occasion to sell.

Q. Isn't the car, after partially unloading at those points, moved on to Berwyn?

A. If we were forced to, we would bring the car on to Berwyn, but if we were permitted, we would attempt to [fol. 1130] sell the car by another salesman; say, the balance of the car would be sold over in Wisconsin, such as Racine, or points like that.

Q. And as to Berwyn and Racine which you have named, you would be unable to reach in such an operation; is that correct?

A. That is right.

Q. Do you have any occasion to stop a car to complete loading which has originated on the S. P. and S. System and moving eastward?

A. Yes, we do.

Q. At what points have you been afforded the privilege of the completion of loading of such cars that have originated on the S. P. and S. system?

A. We do at Missoula, Montana, now.

Q. And on what road?

A. And it is served by the Milwaukee and the Northern Pacific, but if we are originating out there on the Oregon Electric, we can always make a stop on the Northern Pacific.

Q. In fact, is that the only railroad you could make a stop on at Missoula, Montana, to complete loading?

A. Yes, that is the only railroad. We can't give it to another railroad.

Q. Is there any point local to the Milwaukee Railroad east of Spokane at which you would be desirous of having the privilege of stopping a car to complete loading?

A. Yes, at St. Maries, Idaho, where we are buying some lumber now.

[fol. 1131] Q. In connection with cars you may originate on the Milwaukee Railroad out on the Pacific Coast, do you now stop cars at St. Maries to complete loading?

A. On occasions. We have had occasion to do it, yes.

Q. And, under the present routing restrictions, are you able to stop a car at St. Maries, Idaho, originated on the S. P. and S. system and complete loading and then have an unrestricted freedom of moving it to points beyond at the joint through rate?

A. Now, we do not have that, no.

Q. What kind of lumber do you purchase at St. Maries, Idaho?

A. Well, that being an inland mill, they have Ponderosa pine. And, if we would stop the car off there, we would stop it off and we would originate, say, fifteen thousand feet of fir in the car and then go over to St. Maries, Idaho, and pick up the balance of the load, and then go on. We also buy over there what we call a mixed fir, which is fir and larch.

Q. And, from St. Maries, Idaho, do you also obtain Idaho white pine?

A. At St. Maries, Idaho, yes, we buy some white pine.

Q. And on the car which you stop to complete loading at St. Maries, Idaho, then would you be subject to the same restrictions that you spoke of with respect to any car originated on the S. P. and S. and thence moved to Spokane, and then Milwaukee Road from there to eastern points?

A. That is right, we would be restricted.

[fol. 1132] Q. All right, sir. Now, if the relief which the Milwaukee Road seeks in this case were to be granted, and an additional route, without the present restrictions, were afforded to you from Spokane eastward via the Milwaukee Road, would you make use of that route?

A. Well, let me explain it this way—

Q. Yes, sir.

A. We put certain cars in transit so that we can sell at all times. I try to keep a running list of anywhere from fifty to 125 cars rolling at all times. These cars are put on a list and they are sent out in the country, in the State of Iowa, I would say about 170 yards get this list every Monday morning. It is sent out of our Eugene office. The people look the list over, and they see a chance to buy a car, and they snag it off. They may only, say, be able to use a half of that car, and, well, if it were not possible to give them half and let the balance of the car go on, we would bring the car on to Berwyn, and it would be O.K, but in this case we are not permitted to do that. Does that answer your question?

Q. Would it be your intention to route none of such cars, then, over the Milwaukee Railroad from Spokane?

A. Well, I would say we would route some. I have never made a habit of short routing anybody, but we would put cars on that line so we could take care of our customers in Iowa in that territory.

[fol. 1133] Q. Would you use that route also for routing shipments involved in a firm sale transaction?

A. In a firm sale transaction?

Q. Yes.

A. Well, why not?

Q. Well, you would have occasion to use it, do you believe?

A. I would use it, yes.

Q. All right, sir. Now, with respect to the routings of this traffic from Minnesota Transfer to points beyond, do you anticipate there would be any change in your present routings?

A. Yes. We would still operate the same if it comes in on the Great Northern. Remember, I have a great deal of customers on the lines of these other railroads. We have to take care of them, too, so we would want the privilege of diverting a car at Minnesota Transfer, to change it to a line such as the Burlington, Rock Island or any line that is involved up there; otherwise the route would be no good to me.

Q. But you would intend to continue your present practice with respect to that routing; is that right?

A. That is right, definitely.

Q. Do you foresee any loss of traffic to any of the other lines serving the Minnesota Transfer to points east or south thereof, if the relief herein sought were granted?

A. No, I don't think they would.

Q. In so far as your company is concerned?

[fol. 1134] A. That is right. If we had a point, say, in Wisconsin on the Milwaukee, the Milwaukee would get the haul anyhow even if the Great Northern or the Northern Pacific were to haul it to Minnesota Transfer, or if we have a customer located on some other line, definitely, they would get their haul from the Transfer.

Mr. Rockwood: I am sorry. I didn't get that.

The Witness: I was just explaining to him—

Mr. Rockwood: May I have the answer read?

Exam. Dishman: Yes.

(Answer read.)

Mr. Rockwood: I get it. From here on out, if you will just give us all the benefit of your wisdom.

The Witness: I am sorry.

Mr. Rockwood: As well as all counsel.

The Witness: I am sorry. That is my fault.

Mr. Merrill: That is all, sir.

Exam. Dishman: Cross-examine.

Cross examination.

By Mr. Rockwood:

Q. You spoke of your Eugene office.

A. Yes, sir.

Q. Is your wholesale business operated largely out of the Eugene office?

A. Oh, no. We have this office, with three men and a girl out there at Eugene for the purpose of buying. We have a [fol. 1135] teletype machine in our office at Berwyn. Our purchasing agent sits at Berwyn, but we have a vice-president at Eugene. We furnish the orders to the Eugene office, which tries to place them. Now, it may happen that our purchasing agent in Chicago could possibly purchase just as good, at just as good a price and maybe at a better price, and he will do it, so it isn't solely done at Eugene, but some is done out there.

Q. You spoke, or stated that so far in the year 1954, you have purchased from one hundred to one hundred and twenty-five carloads from points on the S. P. and S.

A. That is right.

Q. Does that include Eugene?

A. I would say some, yes; some from Eugene, yes.

Q. That includes Lebanon and Wellwood?

A. Wellwood.

Q. Which of those three, if any, are served by the Southern Pacific Railroad?

A. Well, Wellwood— No. That is a local point on the Santiam Branch. Offhand, in checking back in the records, I didn't find too many. In fact, I think I found on the S. P. and S., only one car from, or two cars from Vancouver, Washington, and some from Portland points. Now, evidently the mill was located on that line.

Mr. Maguire: I don't think the witness understood the question.

By Mr. Rockwood:

Q. Is Wellwood served by the Southern Pacific as well as by the Oregon Electric?

[fol. 1136] A. You are speaking of a common point?

Q. Yes.

A. Yes. Well, let us say that Wellwood is a local point.

Q. Is Lebanon served by the Southern Pacific as well as by the Oregon Electric?

A. Lebanon is a common point.

Q. Southern Pacific and Oregon Electric?

A. That is right.

Q. What about Harrisburg?

A. Harrisburg is a local point, but it was—well, the mill, I guess, was located on that line.

Q. Is Harrisburg, the town of Harrisburg a station on the Southern Pacific?

A. No, it is a local point.

Q. Salem, Oregon, is that served by both the Oregon Electric and the Southern Pacific?

A. Salem, Oregon, I marked down as a common point.

Q. What about Junction City?

A. Junction City is a common point.

Q. What?

A. Junction City is a common point.

Q. Waterloo is local to the Oregon Electric?

A. Yes, and Vancouver and Portland, of course, are common points, I think.

Q. Yes, to all of those lines?

[fol. 1137] A. I imagine they are.

Q. You do know that that is a fact, don't you?

A. Yes.

Q. Salem, Oregon, is on the Oregon Electric?

A. It is on the Oregon Trunk.

Q. Isn't Salem on the Oregon Electric?

A. The Oregon Trunk, I think.

Q. That is likewise served by the Union Pacific?

A. That is a common point, yes.

Q. You know, do you not, that south of the Columbia River down to Bend, the Union Pacific and Oregon Trunk

use the same tracks, and all points are common points on that road? Did you know that, Mr. Flynn?

A. No, I didn't.

Q. How many carloads of Douglas fir lumber do you buy all told in a year?

A. In a year?

Q. Yes.

A. All of the business, you are speaking of?

Q. Yes.

A. Four or five four or five thousand cars.

Q. And how many carloads have you handled in 1954 up to date?

A. To date?

Q. Of Douglas fir lumber?

A. Oh, maybe thirty-five hundred or more.

[fol. 1138] Q. Do some of those originate at points served by the Milwaukee in the State of Washington?

A. Some do, yes, sir.

Q. How many of such cars have you had so far in 1954?

A. Oh, for the Milwaukee you are speaking of?

Q. From Milwaukee points?

A. Oh, I would say maybe one hundred or so; one hundred and fifty cars.

Q. How many carloads of Douglas fir lumber have you had from points served directly by the Northern Pacific or Great Northern in the State of Washington?

A. How many cars?

Q. Yes, this year?

A. Well, I would say that the Great Northern probably handled two hundred and fifty cars, and I keep them down pretty close. I try to hold them down so that they will get a fair share, so I would say about two hundred and fifty cars apiece.

Q. My arithmetic may not be correct, but that makes about five hundred carloads from the Northern lines, and about one hundred from Milwaukee points, or six hundred cars from the State of Washington?

A. Yes.

Q. And one hundred and twenty to one hundred and twenty-five from S. P. and S. points?

A. Yes.

[fol. 1139] Q. That makes, oh, roughly seven hundred and fifty cars?

A. Yes.

Q. Where does the remainder of your Douglas fir lumber come from, Mr. Flynn?

A. I misunderstood, when I said five thousand cars. I was wrong on that figure. I was talking about all lumber purchased at Berwyn. That is for yellow pine, and everything.

Q. I was confining myself to Douglas fir.

A. I understand.

Q. Can you give us a revised figure for Douglas fir, in place of the five thousand cars?

A. Yes, I would say, maybe, in the vicinity, oh, maybe twenty-two hundred.

Q. And you have located, approximately, the source of some seven hundred and fifty cars?

A. Yes.

Q. That leaves about fifteen hundred cars of Douglas lumber, Douglas fir lumber.

A. Yes.

Q. Where does that come from?

A. Well, some of it comes from the Southern Pacific, but but the big majority comes from the Canadian National and the Canadian Pacific. We buy a lot of lumber out in there.

Q. How much comes from the Southern Pacific in Oregon?

A. Well, I do not know whether I have to give that in-
[fol. 1140] formation or not. Do I?

Q. Well, Mr. Flynn—.

A. You are pinning me down to how many cars I give each railroad.

Q. No, I don't care about that, but, Mr. Flynn, this is the situation: I am not trying to pry into your personal business or the business of your company. You have come in here asking the Commission to reach certain conclusions in this case based on the facts of your business, and I want to find out what opportunity you have to purchase and ship Douglas fir lumber from points other than on the S. P. and S. so that if you have, or if you are buying ninety-five per cent of this material from the Southern Pacific, or on the

Southern Pacific, if that were the fact, and five per cent from S. P. and S. points, I think the Commission would want to know that to see how important this case is to you.

A. I see.

Q. The fact is, is it not, in the State of Oregon, the great reserves of Douglas fir lumber or timber are served solely by the Southern Pacific in the territory south of Eugene, Oregon. That is correct, is it not?

A. That is right.

Q. And the Southern Pacific is the major originator of Douglas fir lumber in the State of Oregon?

A. That is right.

[fol. 1141] Mr. Maguire: Wait a minute. Is that a statement or a question?

Mr. Rockwood: I am asking the witness.

Mr. Maguire: Yes.

Mr. Rockwood: He says that is correct. What is your answer?

The Witness: I would say that we buy an enormous amount on the Southern Pacific. Let us be honest about it.

By Mr. Rockwood:

Q. The major amount?

A. Yes, the major amount comes off the Southern Pacific.

Q. Now, when you say from the Southern Pacific mills, I take it that that includes mills common with the Southern Pacific or Oregon Electric in the Willamette Valley?

A. I beg pardon?

Q. When you are talking about purchases from Southern Pacific mills, you are including purchases at points which are served likewise by the Oregon Electric?

A. Yes, sir.

Mr. Maguire: Pardon me. Before the answer is recorded, I would like to make this request. I think, Mr. Examiner, in fairness to the witness, the question should be distinguished. Now, Mr. Rockwood, up to now, has been talking to the witness about purchases in Oregon as a whole, including points on the Southern Pacific not served by the S. P. and S., and the witness said that was very substan-

tial if not a major source of supply. Now, then, this last question does not make it clear whether he is including the [fol. 1142] common points of the Southern Pacific and the Oregon Electric in his Oregon total, or whether he is asking him whether in the common territory, the major portion of his purchases are made on the Southern Pacific. I think that we should understand what the question covers.

Mr. Rockwood: I will be glad to clarify it, Mr. Maguire.

Mr. Maguire: All right.

By Mr. Rockwood:

Q. Is a major portion of your purchases in Oregon from points served solely by the Southern Pacific?

A. Well, here is the thing: Let me explain it in this way—.

Q. Yes.

A. We ask the Eugene office for the originating point and the line the mill is located on. Now, I route it accordingly. If the mill is located on the Southern Pacific and served by the Oregon Electric, maybe he doesn't give me that information. He may say that it comes off the Southern Pacific, and that is it, and I will route the car accordingly.

Q. All right, then the fact is, that the major portion of your purchases are originated by the Southern Pacific, would include the mills served solely by the Southern Pacific, and would likewise include mills served solely by the Southern Pacific and the Oregon Electric at common points?

A. That is right.

Q. Now, if the car originates on the Southern Pacific, what routes are available to you for your use in handling that car, or in marketing that car?

[fol. 1143] A. Well, we can bring it down through Council Bluffs. We could go up through Portland and the Northern routes to Minnesota Transfer. We have routes both ways.

Q. And on those movements from the Southern Pacific mills, served solely by the Southern Pacific, can you route those to Portland, S. P. and S., Great Northern, or Northern Pacific to the Transfer?

A. Well, offhand, I can't say. Some of them are restricted. To my knowledge, from certain mills up there,

I can route cars up there, if we have to make a stop-off, to come via the Northern route.

Q. Isn't that limited to mills which are likewise served by the Oregon Electric?

A. That is right.

Q. Yes. But if the Southern Pacific gets a carload at a common point, you can not move that from Spokane to Minnesota Transfer over the Northern lines, can you?

A. Offhand, I don't know.

Mr. Merrill: Did you say common point?

Mr. Rockwood: I meant common points, common to the S. P. and S. such as Salem. I asked him if they had a carload tendered to the Southern Pacific at Salem whether he could move that to Portland and thence by Northern lines to Minnesota Transfer on a joint through rate, and I take it the witness answered that he is not sure of that.

[fol. 1144] The Witness: That is right.

By Mr. Rockwood:

Q. Can you move a car delivered to the Southern Pacific at the mill point to Portland and thence east via the Union Pacific to the territory in which you make the sale?

A. I never do.

Q. Can you?

A. I don't know, but I never do.

Q. You have never checked to see if you can?

A. No, I don't try to do that, because it would be short-hauling the railroad. I have never made it a practice of short-hauling anybody.

Q. Short-hauling the Southern Pacific?

A. That is right.

Q. You think that is deplorable.

A. I would just as soon ship via the Great Northern or any other railroad, and I am sure that they will back me up on that.

Q. Do you use the long haul through route of the Southern Pacific through El Paso?

A. Occasionally.

Q. Do you route your cars via Union Pacific to points such as Ellis, Kansas?

A. Yes, sir.

Q. Do you similarly route cars to off-line points on the Milwaukee; that is, off the main line?

[fol. 1145] A. Off the main line of the Milwaukee?

Q. Yes.

A. Yes, we route that way.

Q. Roller cars or transit cars?

A. No.

Q. You do not do that?

A. No.

Q. Do you on the Great Northern?

A. On the Great Northern on roller cars?

Q. Yes.

A. Yes, sir.

Q. Do you route them to off-line points off the main line?

A. Yes, we do.

Q. What points?

A. No. I beg your pardon. No.

Q. On the Northern Pacific, I think you stated you did?

A. Yes. You are speaking on the question of transit cars?

Q. Is there anything to prevent you from routing cars via the Milwaukee through Canton, South Dakota?

A. Routing it where?

Q. Over the Milwaukee via Canton, South Dakota. Is there anything in the tariff which prevents that?

A. I have never tried it. I don't know.

Q. You have never examined the tariff to find out whether you could do it or not, I take it?

[fol. 1146] A. No.

Q. Where are the sources of your purchases of Douglas fir lumber in Canada, served by the Canadian Pacific?

A. Where?

Q. Yes, where?

A. Several places—Lumby, Kelowna.

Q. In British Columbia?

A. Yes.

Mr. Maguire: It might be of interest to specify the spelling of that last one.

The Witness: K-e-l-o-w-n-a.

By Mr. Rockwood:

Q. How do you route that lumber back to the middle west?

A. To the midwest?

Q. Yes.

A. Well, on the Canadian Pacific to the border, and the Soo Line to the Minnesota Transfer,—to Portland, and thence Soo Line.

Q. Is that a station on the Canadian side?

A. Yes, and Portland is in the United States.

Q. In North Dakota?

A. Yes.

Q. Then Soo Line?

A. Then Soo Line.

Q. There is no opportunity, of course, for the Milwaukee to participate in that business at all?

[fol. 1147] A. Yes.

Q. Except east of the Transfer; is that correct?

A. They can get it at Minnesota Transfer, if we sold a car in Wisconsin.

Q. I said east of the Transfer?

A. Yes. The Canadian National, they bring it up through Duluth.

Q. You stated that there are no rates from Oregon Electric points on the Santiam Branch to any Milwaukee points west of your plant, Sanborn to Buck Row; is that it? Buck Row?

Mr. Maguire: Buck Grove.

The Witness: Buck Grove.

Mr. Rockwood: Buck Grove?

The Witness: Yes, sir.

Mr. Merrill: Just to clarify that. It was not from Sanborn to Buck Grove, but from west of Sanborn and Buck Grove.

Mr. Rockwood: Yes, west of the line on the map drawn from the station of Sanborn down to the station of Buck Grove.

Mr. Merrill: There is no line of railroad directly between those two points.

Mr. Rockwood: I understand.

Mr. Merrill: All right, sir.

By Mr. Rockwood:

Q. You would like it, I take it, to have rates published by the Oregon Electric concurred in by the Milwaukee from points on the Santiam Branch of the Oregon Electric?

A. Yes.

[fol. 1148] Q. To this entire territory of the Milwaukee shown in yellow on Exhibit 9, to the same extent that rates are applicable from other S. P. and S. points shown in yellow on Exhibit 9?

A. I am only speaking about Iowa. I am not speaking about this other territory.

Q. In so far as that territory includes the State of Iowa, you would like rates from the Santiam Branch?

A. Yes, sir, I would. We may never use them.

Q. How much of your total distribution in Iowa, and I know that you do not have the precise figure, is to Milwaukee points west of Sanborn, or west of Buck Grove?

A. Well, how much—?

Q. Yes.

A. Well, in cars, it isn't a case of how many, but we are trying to sell, and we have sold people at Hull, Rock Valley and so on. We have sold them on that northern branch.

Mr. Rockwood: Could I have the next to the last question and answer read?

(Record read.)

By Mr. Rockwood:

Q. Your answer was responsive to my question. Maybe it wasn't as complete as it should be. Do you know what portion of your total business of western lumber, northwestern lumber from Washington and Oregon goes into that territory?

A. In Iowa?

[fol. 1149] Q. Yes, in Iowa, west of Sanborn and Buck Grove?

A. Very small, if you are talking about our total business. It is a very small percentage if you are speaking about our total business.

Q. Yes.

A. Because we furnish a lot of big outfits, and if we throw it all in, it will be a small percentage.

Q. If rates were made applicable from the Santiam Branch to points in Iowa, on the Milwaukee west of Sanborn and Buck Grove, you would be able to purchase lumber at a mill served by the Oregon Electric on the Santiam Branch, moving to all of this territory, which is served by the Milwaukee except the points shown in red, and you could partially unload those cars at any Milwaukee point, and complete unloading at any Milwaukee point except those shown in red on Exhibit 9?

A. Yes.

Q. That would give you, would it not, the opportunity to partially unload cars and distribute the balance to substantially every Milwaukee station?

A. That is right.

Q. Or a vast number of Milwaukee stations in Minnesota, Iowa, Wisconsin and Missouri?

A. Yes.

Q. And some in Illinois?

A. Yes, but let me say this: If our salesman in Iowa [fol. 1150] sells a half car to a man, what is he supposed to do—wait for that lumber until we can find another guy to buy the other half car.

Q. I appreciate what you are saying.

A. Or we can load that and stop at his point, and then take the rest of the car on to Berwyn. We will take anything in at Berwyn.

Q. Berwyn is one of the rate points?

A. Yes, sir.

Q. But at Berwyn, you can not move traffic from any point on the S. P. and S., using the Milwaukee joint through rates to Berwyn, and the Chicago area?

A. That is right.

Q. I realize that the operation would be somewhat restricted.

A. That is right.

Q. If you have such a shipment?

A. That is right.

Q. But nevertheless your answer to my question is yes?

A. That is right.

Q. If you start a car out from the Santiam Branch or from any S. P. and S. station via the S. P. and S. to Spokane, and the Great Northern, we will say, east of Spokane, can you divert that car in transit short of Minnesota Transfer to a point on the Northern Pacific?

A. To a point on the Northern Pacific?

Q. Yes.

[fol. 1151] A. No, I don't think I can.

Q. Could you stop for partial unloading at a Great Northern point and then complete unloading at a Northern Pacific point west of Minnesota Transfer?

A. Could we stop to unload—?

Q. Partially on the Great Northern and complete unloading at a Northern Pacific point west of Minnesota Transfer?

Mr. Merrill: Just a moment. I object to this line of questioning, Mr. Examiner.

The Witness: We don't have any business in that territory.

Mr. Merrill: They do not have any business up in that territory.

By Mr. Rockwood:

Q. You don't have any business in North Dakota?

A. We don't go into that area at all.

Q. Do you have yards in Minnesota?

A. No.

Q. You have no customers in Minnesota?

A. No.

Q. Your business is in Iowa and Wisconsin?

A. That is right.

Q. And east?

A. East, that is right. Illinois, Wisconsin, Michigan and Indiana; that is right.

Q. I thought you had some business in these other states?

[fol. 1152] A. No.

Q. So far in 1954, how many cars from Oregon or Washington origin points have you stopped in transit to complete loading?

A. To complete loading?

Q. Yes.

A. In Oregon? You are speaking of stops in Oregon?

Q. For cars originating in Oregon and Washington to complete loading at any point east of the original origin point?

A. Maybe fifty or so.

Q. And, at what points? At what points have you completed loading other than Missoula, Montana, which you mentioned?

A. We would stop out in Oregon. One customer may want dimensions, and another may want timbers, and to put it all in one car, we would stop at two stations in one state.

Q. And those fifty cars would include that?

A. Yes.

Q. On cars such as that, the Coast rate on lumber would apply all the way to Chicago?

A. That is right.

Q. What is the Coast rate at the present time on fir lumber; do you know?

A. Into Chicago?

Q. Yes.

A. $1.23½.

Q. What is the rate, if you know it, from St. Maries, Idaho, via the Milwaukee, to Chicago?

[fol. 1153] A. Offhand, I would say about $1.18.

Q. So that if you started out a car partially loaded with fir lumber from a point on the Southern Pacific, we will say, or the Oregon Electric, and stopped it at St. Maries, Idaho, to complete loading, you would pay the Coast rate of $1.23½?

A. That is right.

Q. On the complete carload, including the portion of the car loaded at St. Maries?

A. That is right.

Q. How many times in the year 1954 have you stopped a car to complete loading at St. Maries, Idaho?

A. How many times?

Q. Yes.

A. We haven't right now. We buy lumber at St. Maries. We have been doing it all at Missoula, Montana.

Q. But you are not stopping any cars—?

A. We are not stopping any cars at St. Maries.

Q. You are not stopping any cars of Douglas fir lumber to complete loading at St. Maries, Idaho?

A. No, sir.

Q. And you have not done that in the year 1954?

A. Not to my knowledge.

Q. Could you do that? Could you exercise that privilege on fir lumber cars originated on the Milwaukee in the State of Washington?

[fol. 1154] A. Yes, we could do that.

Q. But you have not exercised that privilege this year?

A. Well, if Art had bought it up on the Milwaukee, and when I speak of Art, that is our Eugene manager, if he buys the car on the Milwaukee, then we would be in a position to do it at St. Maries.

Q. But you have not had occasion to do it in 1954?

A. No.

Q. Can you remember ever having had an occasion to stop such a car originating on the Milwaukee at St. Maries, Idaho, to complete loading?

A. Well, I might have. I can't recall offhand.

Q. You can't recall offhand at the present time?

A. No, not at the present time, we are not doing it.

Q. On a car originating at a mill on the Southern Pacific, which moves, we will say Southern Pacific to Portland, Oregan, Union Pacific, Marengo, and thence Milwaukee, you have a joint through rate, have you not?

A. That is right.

Q. Has there been any such car that you can recall which has ever been stopped—I mean, which is partially loaded at a point on the Southern Pacific, which you have ever had occasion to stop at St. Maries to complete loading?

A. You are speaking now of a car originating on the Southern Pacific, and going through Marengo, and then Milwaukee?

[fol. 1155] Q. Yes.

A. Yes, we have done that.

Q. How many, in the year 1954?

A. Offhand, I can't recall how many. Let us say five.

Q. Are there other pine mills with which you do business

in the states of Washington, Oregon, Idaho and Montana, other than at St. Maries?

A. Yes, at Missoula, Montana.

Q. At Missoula, Montana?

A. Yes.

Q. Do you buy pine lumber off the Oregon Trunk?

A. Off the Oregon Trunk?

Q. Yes.

A. White pine?

Q. Ponderosa pine off the Oregon Trunk?

A. No, sir, we buy fir.

Q. Do you buy Ponderosa pine or white pine at mills in Idaho and Montana other than at St. Maries and Missoula?

A. Yes, we bought some through an outfit here in Chicago who has a mill at Orofino, as I remember it.

Q. Which is on the Northern Pacific?

A. No, I think it comes Southern Pacific-Union Pacific. They generally route it. I don't fool with it.

Q. Orofino, Idaho, I think, my friend, is a Northern Pacific origin?

[fol. 1156] A. They make the bill of lading on it, and it is covered up so that I don't know who it is coming from or how it is moving.

Q. All right.

Mr. Rockwood: Can we agree that Orofino is a Northern Pacific point, Mr. Maguire?

Mr. Maguire: My recollection of it is that Orofino was on the Canadian Branch. I will look at the Guide, and we can agree after I look at the Guide.

Mr. Rockwood: All right.

Mr. Maguire: As a matter of fact, Mr. Rockwood, Orofino, according to the Guide, while it is shown on the Union Pacific and Northern Pacific time tables, when you look at the time table itself, it says Camas Prairie Railroad in each case, and I think we can all agree that the Camas Prairie Railroad is owned jointly by the Union Pacific and the Northern Pacific.

Mr. Rockwood: Yes.

By Mr. Rockwood:

Q. So that any rates on lumber which apply via the Union Pacific and the Northern Pacific would also apply to Orofino?

A. That is right.

Q. I may have asked this, but I want to be sure that I did: Of the one hundred to one hundred and twenty-five cars thus far in 1954 from stations on the S. P. and S., how many were from stations served solely by the S. P. and S. or one of its subsidiaries, such as Waterloo on the Santiam Branch of the Oregon Electric?

[fol. 1157] A. Well, Wellwood and Waterloo, they are local points in that area.

Q. How many were from such local points?

A. I didn't take those figures off.

Q. If you originate a car of fir lumber in the State of Washington, on the Milwaukee, can you move that via Milwaukee east of Spokane, and partially unload on the Milwaukee at a point west of Minnesota Transfer, and complete unloading on any other line other than the Milwaukee point west of Minnesota Transfer?

A. On any other line west of Minnesota Transfer?

Q. Yes.

A. If we originate a car on the Milwaukee?

Q. In Washington.

A. Coming up to Minnesota Transfer?

Q. No, I say, for partial unloading at some Milwaukee point west of Minnesota Transfer?

A. We wouldn't be doing business up in that area. Why would I be stopping a car off to partially unload west of Minnesota Transfer?

Q. Well, I say on any other line. There are a lot of other lines in Iowa, other than the Great Northern and the Northern Pacific, and complete unloading on any other line west, at a point west of Minnesota Transfer?

Mr. Merrill: I object to the question. It is entirely [fol. 1158] hypothetical, an entirely hypothetical question, and this witness has no customers in this area, of which he speaks.

The Witness: You are speaking west of Minnesota Transfer?

By Mr. Rockwood:

Q. All right, west of Minnesota; west of the Mississippi or west of Sanborn, west of Buck Grove on the M. and St. L. or Rock Island, or North Western or Omaha, on any other line; can you?

A. No, that would be tied down, and I am pretty sure they would— Now, you are speaking of cars coming through the Minnesota Transfer now? I don't picture the question.

Q. No. A car moving via the Milwaukee, and partially unloaded at a point on the Milwaukee west of Minnesota Transfer.

A. Yes.

Q. Can you complete unloading at a point on any other railroad west of Minnesota Transfer in Iowa?

Mr. Maguire: If the witness knows, of course.

The Witness: I would say no.

By Mr. Rockwood:

Q. In other words, it is the policy of the Milwaukee to retain the long haul to Minnesota Transfer, is it not?

Mr. Maguire: That is argumentative, and this witness is not qualified to answer as to the policy of the Milwaukee.

Mr. Rockwood: May the record show that the witness nodded his head?

Mr. Maguire: I move that the nod of the head be stricken then.

[fol. 1159] The Witness: I will say I do not know the answer.

By Mr. Rockwood:

Q. You do not know?

A. No, sir, I do not know. You guys are too clever.

Mr. Rockwood: That is all I have.

Mr. Torinus: I have one or two questions.

Exam. Dishman: All right.

By Mr. Torinus:

Q. What proportion of your total orders, of your total cars handled are roller cars, and what proportion are so-called firm sales cars?

A. Well, here is how they work that—You are asking for the percentage?

Q. That is right.

A. It is hard to take a figure out of the air, sir. We try to buy about twenty-five or thirty cars at a clip and put them in transit in order to keep them on the line. When you have a lot of people out, you have to protect all sides; let us put it that way. We try to keep on our car list as high as fifty-five cars going, rolling to Berwyn, I will say; fifty-five cars are roller cars to us, and we will sell anything on that list, and if they don't get sold, we will bring them on to Berwyn.

Q. Well, what proportion of this four or five thousand cars that you bill out of the West Coast in 1954 so far were cars—?

A. How many did you say? I cut that down to twenty-two hundred.

Q. That was fir you were talking about. Was that northwestern fir?

[fol. 1160] Mr. Merrill: Of his total business.

By Mr. Torinus:

Q. What proportion of the twenty-two hundred cars, then, were cars for which you had a firm order at the time they were loaded at point of origin?

A. That is a pretty rugged question, but I will give you a percentage if you want it.

Q. I would like your best judgment?

A. Let us say that sixty per cent were firm orders, and forty per cent were rollers.

Q. Now, how many cars in 1954 did you stop for part unloading at points in Iowa west of Sanborn; was that the place you mentioned?

A. We haven't stopped anything. We are trying to stop them. We have a new salesman in that territory. Let me explain that.

Q. You have answered the question. You haven't stopped any.

A. All right.

Q. Now, how many cars of that total of twenty-two hundred were stopped for part unloading before final delivery?

A. Part unloading?

Q. Yes, part unloading?

A. That is a pretty rough figure. I couldn't pin it down to any certain number of cars. Let us put it this way: I will try to give you a percentage for the record, roughly. If a salesman handled, say, thirty or forty cars in a month, maybe five or six of those might be stop-offs, maybe more. [fol. 1161] It depends on the trends. It depends on the times; whether the salesman's trip around the circuit is when these lumber guys are loaded with lumber, and then he is selling half cars.

Q. Five or six cars out of thirty?

A. Roughly. That is the best figure I can give you.

Q. About fifteen per cent?

A. Yes.

Q. Maybe fifteen to twenty per cent?

A. Yes.

Q. Were those stop-offs east of Minnesota Transfer?

A. East of Minnesota Transfer?

Q. Yes.

A. Definitely, yes, sir.

Q. In all cases?

A. Yes, sir.

Q. Now, what percentage of your lumber is sold in the territory east of Chicago?

A. East of Chicago?

Q. Yes.

A. A big percentage. Now, you are talking about our lumber. Do you mean by that Douglas fir?

Q. Let us confine it to your North Pacific Coast lumber. Is that all Douglas fir?

A. That is all Douglas fir.

Q. Some Ponderosa?

[fol. 1162] A. Some Ponderosa, that is right.

Q. What percentage of your Pacific Northwest lumber,

which is Douglas fir and Ponderosa, was disposed of east of Chicago in 1954?

A. Well, in the early part of the year we were selling quite heavily down in Indiana, and in Ohio. So, let us say, the overall picture maybe ten or fifteen per cent going east of Chicago. We are speaking strictly of Douglas fir now?

Q. Well—.

A. Are you limiting it to Douglas fir?

Q. And Ponderosa pine.

A. The biggest portion of it is sold right around the Chicago area, but we do sell an enormous amount in Wisconsin, and, as I said, in Iowa. We sell in Iowa, too.

Mr. Torinus: I have no further questions.

By Mr. Golden:

Q. Do you sell at numerous points in eastern Iowa, Illinois and Wisconsin?

A. At any point we can sell it we are going to sell it.

Q. And you say that ten or fifteen per cent of your business goes east of Chicago?

A. Yes, sir.

Q. That comes from the Pacific Coast?

A. Yes, sir.

Q. And most of the remainder is being sold in Wisconsin?

A. You are speaking of the past year, and I was speaking [fol. 1163] of that. We had a pretty big customer down in Indiana.

Q. That is, at numerous points?

A. Yes, sir.

Q. Would those numerous points include points where you sell part cars in Wisconsin and Illinois?

A. Yes, we tried to—We try to sell half a car any time that we can.

Q. Now, you mentioned a while back that when your cars originate up in Oregon, your Eugene agent tells you what road it originates on?

A. Our office advises us.

Q. Yes.

A. And sends us an order, and we get the order the same as if the mill were placing the order. He gives them the

original and the pink copy comes back to Chicago, but we will advise the same day as to what line the mill is on, and then when the order comes in, unless he has to have the routing the same day, I give it back to him on the teletype machine.

Q. You, as traffic manager, arrange the routes that are open?

A. We try to control it so that everybody is happy.

Q. When it is going east of Chicago you do the same thing with any cars going there?

A. Yes, sir.

Q. Any place that you may go to in the United States?

A. That is right. Otherwise, we wouldn't know where the cars were.

[fol. 1164] Q. That is your job as traffic manager?

A. I hope it is.

Mr. Golden: That is all I have.

By Mr. James:

Q. Is Berwyn on the Milwaukee?

A. Is it on the Milwaukee?

Q. Yes.

A. Definitely not.

Mr. James: That is all.

Mr. Boe: I have no questions.

By Mr. Hillman:

Q. I believe you stated that it was your practice and your policy not to short-haul any originating carrier?

A. That is right.

Q. And I assume you mean, where there is no additional costs, and there are no privileges involved, the implication is that you will give the originating carrier in that situation the longest haul possible from point of origin to destination?

A. That is right. We feel that as he is the originating carrier, he is entitled to it.

Mr. Hillman: That is all.

Mr. Torinus: May I ask one or two further questions?
Exam. Dishman: Yes, sir.

By Mr. Torinus:

Q. Mr. Flynn, did you ever make any request of any rate bureau for these through routes and joint rates that the Milwaukee is seeking in this case?

[fol. 1165] A. No, sir, and I will tell you why we didn't. Originally, when I came to Berwyn, I came from General Mills. I spent twenty-two years in the grain business. I don't want to give you my history, but when I came there, they had no traffic department here. Out in Illinois and Iowa, I knew the country pretty well. I had been out there. I came there and sold them on the idea of selling lumber in Iowa, and these other points, so I set up a traffic department at Berwyn. After we got in business, I soon found out that we were restricted out there over the Great Northern, and we weren't selling in Iowa at that time, and then we got into the Korean War. I did keep two men in Iowa at that time, or we would probably have fallen by the wayside at that time, but when the Korean War broke out, there was no use in expanding our business to a point where we couldn't take care of our customers, so we called the men back into Chicago. Now that the war is over with, and we are back in there since after July, and we are trying to sell out there.

Q. Then, as I understand it, neither you nor your company made any request of any railroad official for these rates under the conditions that you are talking about?

A. No, sir, not until just recently. Even in the early spring, when you people had this thing on the West Coast, at that time we didn't have men in Iowa, and we, at that time, hadn't planned to go into this thing, but in the meantime we put more men in Iowa, and we are selling lumber [fol. 1166] there, and if you don't give them the opportunity of selling it, what is the use of having a business.

Q. You are talking about now having any opportunity to sell in Iowa. You have routes into the whole state of Iowa from Southern Pacific and Union Pacific points via Omaha, with full transit privileges beyond to the whole United States, haven't you?

A. Going where?

Q. Going to the whole United States.

A. Will you tell me how I can get to points on the Milwaukee through Omaha? You tell me how I can get to Hull, or one point in there?

Q. Will you tell me where Hull is?

A. It is right on this map, right here. I see it here.

Q. You are the witness. I just ask the questions. Tell me where Hull is.

A. I am sorry, sir. I got a little excited. Here is Hull and Rock Valley, right here (indicating).

By Exam. Dishman:

Q. In what location from Omaha?

A. From Omaha?

Q. Yes.

A. It is straight north from Omaha.

Q. How far—?

A. How can I stop a car there and then come on.

Q. How far is it from Omaha? I want to get the location for the record.

[fol. 1167] A. Well, I would say it is 200 miles north of it.

Q. Approximately?

A. Yes.

Mr. Maguire: If I might just suggest—.

Mr. Torinus: There is no occasion for suggesting, Mr. Maguire.

Mr. Maguire: The Examiner asked the question, and I take it ill that you should try to keep that information out of the record.

Mr. Torinus: I am not trying to keep it out of the record.

Mr. Maguire: I was going to make a perfectly proper suggestion.

Mr. Torinus: I was trying to cross-examine the witness.

Exam. Dishman: I wanted the location of the point for the record.

Mr. Rockwood: It is shown in Exhibit 9.

Mr. Maguire: The Examiner asked the question.

Exam. Dishman: Let the witness answer.

The Witness: It is straight north of Omaha on a branch of the Milwaukee running across there (indicating).

By Exam. Dishman:

Q. Approximately how far? You don't have to be exact?
A. Let us say two hundred miles.

Exam. Dishman: All right. Proceed.

By Mr. Torinus:

Q. Isn't it a fact, Mr. Flynn, that you do have routes [fol. 1168] into the Iowa territory served by the Milwaukee from the North Pacific Coast via the Union Pacific Railroad to Omaha or Council Bluffs?

A. Yes, if you make it the final destination.

Q. You do have routes to Hull, then, via the Union Pacific, Council Bluff, Milwaukee; Omaha or Council Bluff, Milwaukee, beyond?

A. Yes.

Q. You say if you originate a car on the Southern Pacific, on the Southern Pacific or the Union Pacific—that is the railroad from which you purchase the majority of your Douglas fir, you testified, don't you have routes—?

A. No, you couldn't get in there.

Q. You are sure about that?

A. I am pretty sure about it. I don't think you could get in there. You would have to ask the Milwaukee to back-haul, and I am sure they wouldn't do that.

Q. Don't you have routes from Southern Pacific points via the Union Pacific, thence Milwaukee beyond Council Bluffs into Iowa generally?

A. Into the southern part of Iowa, yes.

Q. Your point is that you are not sure whether you have routes Omaha to Hull because that might involve a circuitous round-about route via the Milwaukee to Hull from Council Bluffs; is that correct?

[fol. 1169] A. I would say yes.

Q. But you do not know now whether you have routes via the Southern Pacific into Hull or not; is that right?

A. Offhand, I would say no. To be honest with you, I would have to look.

Q. Are you sure you don't have routes?

A. I don't think I have. You are referring to a car going directly there, and that is the final destination; is that right?

Q. Well, let us take that situation.

A. Is that what you are asking?

Q. Let us take that situation first. Do you have routes via the Union Pacific through Council Bluff, and thence Hull as the final destination?

A. Yes. I would say yes.

Q. You do have routes that way?

A. I would say yes.

Q. You also have a route via the Union Pacific, Marengo, thence Milwaukee to that territory?

A. Yes.

Q. Do you also have a route via Union Pacific, Council Bluff, then Hull, stopping to part unload, and then any destination beyond on the Milwaukee?

A. Not any destination, no.

Q. Beg pardon?

A. Not any destination, no, sir.

[fol. 1170] Q. Any destination beyond Hull on the Milwaukee?

A. I would say no, we haven't got that.

Q. Where haven't you got it?

A. On the Milwaukee. You said any destination on the Milwaukee?

Q. That is right.

A. With the exception of the common points.

Q. Mr. Rockwood calls attention to the fact that those points are not restricted on the Union Pacific route; isn't that correct?

A. Offhand, I do not know.

Q. You don't know then, and you haven't investigated whether or not you could partly unload a car at Hull and move beyond to any destination on the Milwaukee, whether it is red, brown, yellow or what, on Exhibit 9?

A. Well, that is not being fair now.

Mr. Maguire: Just a minute.

Mr. Torinus: I have asked the question.

Exam. Dishman: Proceed.

The Witness: When I sat down here, I was prepared to talk about these points, how we were coming into this territory, and now you come up with the Union Pacific.

By Mr. Torinus:

Q. All right. You said you couldn't sell lumber in Iowa. Had you finished your answer?

A. Yes.

Q. You said you couldn't sell lumber in Iowa; that you put a salesman down there and you couldn't sell Pacific [fol. 1171] Coast lumber in Iowa from the Pacific Northwest. I am asking you--.

A. If I said that—.

Q. Wait until I finish my question. (Continuing) —whether you can't sell lumber originating on the Southern Pacific, your major source of supply, in Iowa at any destination on the Milwaukee, which moves into Iowa via the Union Pacific?

A. We do, sir.

Q. You do?

A. Yes.

Q. You can also go on beyond Milwaukee via that route, can you not?

A. Yes, that is right.

Q. You can also get into that territory via the Union Pacific, Marengo; thence Milwaukee?

A. Into Iowa?

Q. Into Iowa?

A. Yes.

Q. Now, Mr. Flynn, at whose invitation are you here testifying in this hearing?

A. Well, I would say the Milwaukee in this particular case.

Mr. Torinus: I have no further questions.

Exam. Dishman: Mr. Merrill?

Mr. Merrill: Yes.

Redirect examination.

By Mr. Merrill:

Q. Did the Great Northern or Northern Pacific repre- [fol. 1172] sentatives contact you with respect to this case?

A. In the beginning, as I remember this thing, last De-

cember, I think around January, all three railroads stopped at our place about it, and, as I explained at that time, I didn't have a man in Iowa, and I didn't think it was an argument for us to get into, so I told all three parties that I was more or less going to stay out of it.

Q. Did the Northern Pacific and Great Northern representatives explain their position to you in connection with this case?

A. No. They just more or less asked me if I was going to participate in it.

Q. I take it they were not encouraging your participation?

Mr. Rockwood: Is that a conclusion you are announcing, Mr. Merrill?

Mr. Merrill: You can strike it out.

Mr. Rockwood: I move it be stricken.

Exam. Dishman: All right.

By Mr. Merrill:

Q. As to this mill at Harrisburg, Mr. Flynn, is it your understanding that that is local on the S. P. and S. system, the mill itself, as distinguished from the town?

A. At Harrisburg?

Q. Yes.

A. It is local on that road, yes.

Q. The mill is?

A. Yes, the mill is.

[fol. 1173] Q. Would you give a few more details as to why you desire the privilege of stopping your load at St. Maries in addition to the privilege you now have of stopping at Missoula on all these shipments which might originate on the S. P. and S. system?

A. Well, naturally, we want as many opportunities to buy lumber as we can get. In other words, we love competition. It helps us in buying it, if that is what you mean. We are now limited to one mill, and if we had the choice of two, it is to our advantage.

Q. The Great Northern counsel inquired about your stopping cars in Iowa to partially unload, and how many you have had occasion to stop west of Sanford and Buck

Grove, but he didn't give you any opportunity to explain the situation. Would you proceed to explain why, at the present time, you have had no occasion to stop cars at those points?

A. Well, as I remember, I stated or explained that we didn't have a man in that territory. Now, we have a man in that territory. You must remember this, gentlemen, that out there in Iowa, you have a lot of line yards out there, and that is keen competition. They can buy a carload through as long as they stay on the railroad, but we are over here at Berwyn, and we are trying to sell a half a car the same as the other fellow is, and we must try to sell to an individual, as in our case there, and he only orders half a car, and then we have had to sit tight until we can pick up another customer for the other half car, and if we can't do that, we let the other half car come on into Berwyn, [fol. 1174] or go to a point that is available to us.

Q. Now, Mr. Flynn, if you route a carload via the Milwaukee from Spokane to the Transfer, and then give it to another railroad such as the Chicago and North Western to haul to a destination in Iowa, would you regard that as short-hauling the Milwaukee Railroad?

A. No, that would be a long haul for them.

Q. Now, do you know whether, on a shipment which comes through the Omaha gateway, via the Union Pacific routes, that from there you can stop at points along the Milwaukee Railroad to partially unload, and then forward the car to any point east of Chicago, whether north or south of the Ohio River?

A. No, we can't.

Q. You can't?

A. No, sir. Of course, our purchases of fir lumber isn't done in that area, and I would—South of the Ohio River?

Q. Yes, sir.

A. I do not know. I would just as soon say that I do not know.

Mr. Merrill: That is all.

Mr. Maguire: Mr. Examiner, I wonder if I can have permission to ask a couple of questions in addition to those asked by Mr. Merrill?

Exam. Dishman: All right.

By Mr. Maguire:

Q. I would like to refer to the lumber which you would buy or have bought at St. Maries, Idaho. That is Pon-
[fol. 1175] derosa and/or Idaho white pine, as I recall your testimony?

A. Yes, but we also buy fir and larch, too.

Q. Yes. Now, is that lumber that you buy at St. Maries, is that dried lumber or is it green lumber?

A. Well, if we buy Ponderosa pine, it is generally kiln-dried. That is the purpose of buying it. It is for finishing purposes.

Q. And the same would apply to the white pine that you would buy?

A. I would say yes.

Q. Now, what kind of lumber do you buy at Missoula, which you use to complete a load?

A. We would buy Ponderosa pine.

Q. Ponderosa pine?

A. Yes, or Idaho pine; whatever they have there.

Q. Whatever they have there?

A. That is right.

Q. Now, is that generally kiln-dried?

A. Yes. I would say yes.

Q. And you buy—strike that, please. And the fir that you buy from Southern Pacific sources in Oregon, is that green or is that kiln-dried fir as a rule?

A. We use a better name than green lumber. We say air-dried.

Q. Air-dried?

A. Or kiln-dried. It might be both.

Q. Is it good practice in shipping lumber to mix green, or, as you say, air-dried fir, with kiln-dried pine?

[fol. 1176] A. It wouldn't make any difference as long as it is separated. We generally lay a piece of paper over it; that is about all.

Q. Both of them, however, at the time, are they dried?

A. No. It could be air-dried, too, as well as kiln-dried.

Q. I mean, is it dry lumber?

A. Well, when we say air-dried, it would be not too dry, no. It would be considered green lumber, if you want to use that expression, but, like I say, we use air-dried lumber.

Q. What is the rate on lumber from Missoula to Chicago? I believe you stated the rate from St. Maries to Chicago was about $1.18.

A. I think the Missoula rate is about $1.18 also.

Q. So that, in so far as any penalty which you have to pay by reason of paying the carload rate, the Coast carload rate on a part load originating in the Coast territory and going through either Missoula or St. Maries, the penalty, if any, would be about the same; is that right?

A. Yes, roughly speaking. That penalty isn't too much when you add it up.

Q. Yes. Now, according to your routes, as I understand it, if you procured, as to what you procured from Southern Pacific points, and what you procured from S. P. and S. points, as I recall, you stated that your figures are based upon the data given to you by your branch in Eugene, as to which line any particular car was loaded on; is that right?

[fol. 1177] A. Yes, he advises us. If he has to have the routing in a hurry, when he buys a car, and the car is loaded, and they want the routing right away, and naturally we will furnish it to them over the teletype. Otherwise, a copy of the original order is mailed to the Berwyn office, and we, in turn, advise the mill direct how the car is to be routed.

Q. Then, are all of the figures—Let us change the locale just a minute here, and get into Iowa. On your sales west of this line between Sanborn and Buck Grove, whatever figures you have on that are merely the results of your experience since some time in the summer of the current year; is that right?

A. Yes, since July, yes.

Q. Has that market, in your opinion, been fully explored and developed as yet, or is it still in the pioneering stage?

A. We are still working on it, that is right. We have a brand new man in there.

Q. And does the routing of a car—We will move out to the West Coast again; I just threw that in. Does the routing of a car, say, from a common point on the S. P. and S. system and Oregon Electric, a point common with the Oregon Electric and Southern Pacific, does the routing

of the car, with reference to the carrier which originates the haul, is there any connection between that routing and the respective car supplies of the two carriers that may have been available at the shipping point at the time of the shipment?

[fol. 1178] Mr. Torinus: I object, if he is going into a brand new subject. They have been around about three times on direct examination, and I object to it.

Mr. Maguire: Now, that is not a brand new subject, Mr. Torinus.

Mr. Torinus: It is brand new as far as this witness is concerned.

Mr. Maguire: Will you allow me to state my defense against your objection, or do you want to talk all the time?

Mr. Torinus: Go ahead.

Mr. Maguire: This question was gone into by counsel, and as to the shipments, number of shipments originated at common points, with the implication that the shipper had absolute freedom of choice between the railroads serving that common point. I think that it is perfectly proper redirect examination to clarify that, Mr. Examiner.

Exam. Dishman: The objection is overruled. The witness may answer the question.

Mr. Maguire: Would you like to have that answer read back to you?

The Witness: Yes, sir.

Mr. Maguire: Will you read the question, Mr. Reporter?

(Question read.)

Mr. Torinus: If he knows.

Exam. Dishman: Well, do you know?

The Witness: No. Let me say no. We are advised [fol. 1179] some times that they are Oregon Electric and also the Southern Pacific. He puts that on the order, and I have a choice.

By Mr. Maguire:

Q. So you do not know? The answer is that you do not know?

A. Let me say no.

Q. Now, with regard to shipments which originate at common points served by both the Southern Pacific and the Oregon Electric, would you regard it in the good interests of your business if the routing via the S. P. and S. or the Oregon Electric, I should say, were just eliminated entirely, or do you wish to route over both roads in the routing of your business?

A. Over both routes, to tell you the truth.

Mr. Maguire: That is all I have.

Recross examination.

By Mr. Rockwood:

Q. And you have routes over both the lines of the Oregon Electric and the Southern Pacific, do you not?

A. That is right.

Q. Coming back to Harrisburg for a minute. You say the mill at Harrisburg is served by the Oregon Electric?

A. Yes, sir.

Q. Does not that same mill have a loading dock on the Southern Pacific?

A. I wouldn't know that, sir.

Mr. Rockwood: That is all.

By Mr. Hillman:

Q. Mr. Flynn, Mr. Merrill asked you a question involv- [fol. 1180] ing your definition of long-haul and short-haul. By your answer to that question, I take it you didn't mean to contradict your earlier statement that it was your policy, wherever possible, to give the originating carrier the longest haul from point of origin to destination?

A. No. He asked me if the Milwaukee got the haul to Minnesota Transfer, would I consider that a long haul, and don't you think that is a long haul?

Q. I am not testifying, Mr. Flynn?

A. What do you want, a transcontinental route?

Q. I am asking you whether, by your answer, you intended in any way to contradict what you earlier stated

concerning your policy to give the originating carrier the longest haul possible from point of origin to destination?

A. Not destination, I didn't say destination. I said the longest haul, or that is what I meant to say. I want to give anybody a long haul, but in a case like this, why tie up all of the cars of the Milwaukee, when you have three or four customers on the North Western, or some other carrier, that want a car and we could snag it off and divert it to them? What would I do if I were to have them all on the Milwaukee?

Exam. Dishman: Does that answer your question?

Mr. Hillman: No, your Honor, it does not.

The Witness: I am sorry.

By Mr. Hillman:

Q. If it is possible for you to give a more definite answer, [fol. 1181] perhaps yes or no, to my question: Would your policy still be, for example, with respect to destination points which were competitive to the North Western and Milwaukee as to traffic originating on the Milwaukee, would it still be your policy as you stated once before that it was,—

A. Yes.

Q. (Continuing)—to give the originating carrier the longest haul possible from point of origin to destination?

A. If our customer was served at a common point, you are speaking of?

Q. That is right.

A. At a common point?

Q. That is right.

A. Well, here is what happens, gentlemen. Your customer has something to say. He is buying the cars, too. If he wants the Milwaukee, and is located on the Milwaukee, would you give it to somebody else? Do you dissatisfy your customer?

A. No, I understand, but what I think you are speaking of now is customer policy, and I am talking about your own policy to the extent that you control the routing?

A. That is right.

Q. What is right?

A. Let us take a concrete case, and explain it that way. We have a customer located, we will say, at a common point on the Milwaukee, the lumber yard is located on the [fol. 1182] Milwaukee, and you have a car coming from the west on the Milwaukee, would you think that it would be fair to take that car away from the Milwaukee at Minnesota Transfer, and give it to, say, the North Western, if it is serving the same town, but the man was actually located on the Milwaukee Railroad. Don't forget when I get an order from a customer, I also get the railroad he is located on. That is a part of the order, and the salesman makes up the order, and he has to show the line he is on.

Q. I think you have answered the question. Thank you.

A. All right.

Mr. Hillman: That is all.

Redirect examination.

By Mr. Maguire:

Q. So long as we are on this apparent contradiction, when you gave Mr. Hillman the answer on his first cross-examination, and the answers on the second, did you intend by that to forsake the position which you had adopted upon direct examination—?

Mr. Hillman: Just a minute.

Mr. Maguire: Let me state the question, please.

Mr. Rockwood: And I object. Mr. Maguire is about to summarize his understanding of what the witness said on redirect, and then ask him a leading question in that regard, and I object at this point. The record will speak for itself. The gentleman, I gather, does not intend to perjure himself, and I will so stipulate.

Exam. Dishman: I would like to know whether or not [fol. 1183] you reversed the position that you stated earlier in regard to the long haul, giving the carrier the long haul? Do you still stick to that position?

The Witness: When I speak of the long haul, I consider giving any railroad a long haul, that is right. I mean that.

Exam. Dishman: Isn't that what you wanted to bring out?

Mr. Maguire: No. I will avoid any suspicion of fault that Mr. Rockwood may attribute to me. I will refrain from asking anything further, as to that.

Mr. Rockwood: All right.

By Mr. Maguire:

Q. If the rates are placed in effect via the Milwaukee, such as the Milwaukee requests, between Spokane and Minnesota Transfer, is that going to have any effect one way or the other as to the routing of traffic over the various lines running between Minnesota Transfer and your marketing territory over what it is at the present time?

Mr. Torinus: I object to the question as repetition. That has been gone into three or four times, and the answer has been there has been no change.

Exam. Dishman: Is that right?

The Witness: I originally said there would be no change, but if it goes to the routing of those shipments over other railroads, I have very good friends with other railroads. Bear that in mind, too.

Mr. Maguire: That is all.

[fol. 1184] Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: We will take a short recess.

(Recess.)

Exam. Dishman: The hearing will come to order, please. Are you ready to proceed, Mr. Merrill?

Mr. Merrill: Yes, sir.

Exam. Dishman: Call your next witness.

Mr. Merrill: I will call Mr. Dyke.

GOVERT A. DYKE was sworn and testified as follows:

Direct examination.

Q. Will you state your name and spell it, please, for the record?

A. Govert A. Dyke—G-o-v-e-r-t A. D-y-k-e.

Q. What is your business address?

A. 15 Union Station, Spokane, Washington.

Q. By whom are you employed?

A. The Milwaukee Railroad.

Q. In what capacity?

A. Agricultural Agent for Washington, Northern Idaho and Western Montana.

Q. What is the nature of your duties as agricultural agent?

A. Well, the purpose of the Agricultural Department is to promote new and improved farming and livestock practices in territory that is served by the Milwaukee Road. [fol. 1185] The agricultural agent's function is to create and establish better agricultural relations; also to assist farm and livestock interests with their problems; also to develop and improve agricultural products, and to help and urge better transporting and marketing for all agricultural products, including livestock.

Q. In the course of your duties, have you become familiar with grazing areas served by the Milwaukee Railroad in Northern Idaho?

A. Yes, sir.

Q. What stations on the Milwaukee Road in Idaho are near to such grazing areas?

A. Well, on the main line of the Milwaukee Road, through the St. Joe National Forest, there is St. Maries, Calder, Marble Creek, Avery and Falk, and there may be a few other smaller stations.

Then on the Elk River line, which is from St. Maries to Elk River, we have Santa, Fernwood, Clarkia, Bowville and Elk River.

Then, on the branch line north of Spokane, north and east of Spokane, we have Setter, Blanchard and Spirit Lake. That is known as the Metaline Falls Line.

Q. Are those stations located, which you last mentioned, in Idaho?

A. Yes, sir.

Q. Which of the stations on the main and branch lines which you have named have facilities for loading and unloading livestock and sheep?

[fol. 1186] A. St. Maries, St. Joe. Sheep are unloaded at Calder, Marble Creek and Falks.

Q. What provision, if any, can be made to handle, that is, to load or unload livestock or sheep at stations on these branch and main lines, which have no permanent facilities for loading or unloading?

A. There are times when portable chutes can be set up.

Q. Does the Milwaukee Railroad traverse any areas which the Forestry Service makes allotments from for use in the grazing of livestock or sheep?

A. Yes, the main line, and the Elk River branch line traverse the St. Joe National Forest in Idaho. There the Forest Service divides or sets out areas or use units for the purpose of grazing livestock, and this arrangement is based on size, is based on the number of livestock it can carry in the area.

Q. When you speak of livestock, do you include the term "sheep", as well?

A. Yes, sheep and cattle.

Q. How many allotments are there in the St. Joe National Forest?

A. There are 43 allotments to date.

Q. And is the St. Joe National Forest traversed by both main line and branch lines of the Milwaukee Railroad?

A. Yes, sir.

Q. All right. How many acres of grazing area are there in the 43 allotments?

[fol. 1187] A. In the 43 allotments there are 826,160 acres. That is the gross acreage.

Q. And what is the capacity for grazing sheep or cattle for that acreage?

A. The carrying capacity are 24,900 sheep and 3,758 head of cattle.

Mr. Rockwood: What is that last?

The Witness: 3758 head of cattle.

Mr. Rockwood: May I inquire just to make clear my interruption?

Mr. Merrill: Go ahead.

Mr. Rockwood: Those are not alternatives. That is, at the same time it can take care of 24,900 sheep and 3,758 head of cattle?

The Witness: Yes, or if the allotment areas are not leased out to a sheep man, it can be leased to cattlemen, or vice versa.

Mr. Rockwood: Yes. Thank you.

By Mr. Merrill;

Q. How about the areas located along the branch line of the Milwaukee north from Spokane? What is the acreage and the capacity of those areas?

A. There are approximately 87,000 acres of grazing area, and it has a carrying capacity of approximately seventy-five hundred head of sheep—.

Mr. Torinus: What is that number of sheep?

The Witness: Seventy-five hundred.

Mr. Torinus: Thank you, sir.

[fol. 1188] By Mr. Merrill:

Q. Are the grazing areas which you have named, both along the main line and the branch lines of the Milwaukee Railroad carrying a full capacity of livestock at the present time?

A. To my knowledge, they are not.

Q. Do you know whether or not there are any loading or unloading facilities at Pocono on the Milwaukee Railroad?

A. I am not sure, but I believe there are.

Q. Would you give the figure as to the number of sheep which are now grazed in the St. Joe National Forest, or were grazed there in 1954?

A. It was estimated there were around eight thousand head.

Q. Of sheep?

A. Yes.

Q. And the total capacity of sheep for that St. Joe National Forest this year was what?

A. 24,900.

Q. Now, is there any extensive logging activities in the State of Idaho?

A. Yes, there is considerable logging in the national forest and other lands.

Q. Has that any effect on the amount of acreage available for grazing?

A. Usually when logging takes place, the land is opened up for grazing, yes, sir, which increases the grazing area. [fol. 1189] Q. And if the land is not used for grazing on after it has been logged, does it remain suitable for that purpose?

A. It should be grazed just as soon as possible. Otherwise, it brushes in; there is too much undergrowth, and the carrying capacity is decreased.

Q. If these grazing areas are more fully utilized for summer grazing, what would be the effect on the volume of eastbound tonnage on the Milwaukee Railroad?

A. Well, naturally, the movements to the eastern feed lots and central markets would increase, and therefore the tonnage should increase.

Q. And when you speak of the eastern feed lots, to what states do you refer?

A. Well, the midwest areas,—Iowa, Minnesota, Illinois. Those are the main ones.

Q. Do you know what facilities the railroad has for feeding and watering of livestock on its line between Spokane and Minnesota Transfer?

A. Well, some of the major feeding and watering stations from the west to the east would be at Avery, Idaho, Deer Lodge, Montana, Harleton, Montana, Miles City, Montana, and Aberdeen, South Dakota, Montevideo, Minnesota and St. Paul, South St. Paul, Minnesota.

Q. How many livestock cars are presently owned by the Milwaukee Railroad?

[fol. 1190] A. Well, as of October 15th, the Milwaukee Railroad owned 2581 single decks, and 738 double decks.

Q. And, has the Road experienced any difficulty in supplying cars for the loading of livestock which has been

summer-grazed along our line in Idaho during recent years?

A. Not to my knowledge. This year there was no shortage.

Mr. Merrill: That is all.

Mr. Cockrum: May I ask a question?

Exam. Dishman: All right.

By Mr. Cockrum:

Q. Do you know if Pocono is located in that St. Joe National Forest area that you refer to?

A. I can't place it right now, sir.

Q. Do you know if St. Maries, Idaho, is?

A. It is in that area, yes, sir.

Mr. Cockrum: Thank you, sir.

Mr. Torinus: May we have a two or three minute recess, Mr. Examiner?

Exam. Dishman: All right.

(Recess.)

Exam. Dishman: The hearing will come to order.

Mr. Merrill: May I ask a couple more questions before the cross examination?

Exam. Dishman: All right.

By Mr. Merrill:

Q. During the recess, did you ascertain the location of Pocono, Idaho?

[fol. 1191] A. Yes.

Q. Where is it?

A. It is 19 miles east of St. Joe, Idaho, and 14 miles west of Avery, Idaho, on the Milwaukee Railroad.

Q. Is that in St. Joe National Forest area?

A. I can't recall the exact boundary lines, but it is all adjacent to or very close to it. I believe it is in the Forest area.

Mr. Merrill: Thank you, sir.

Mr. Rockwood: I have no cross examination.

Exam. Dishman: Mr. Torinus?

Mr. Torinus: I have no questions.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: Call your next witness.
Mr. Maguire: We will call Mr. W. K. Hettinger.

W. K. HETTINGER was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Have you previously been sworn?
A. Yes, sir, I have.
Q. Your name is W. K. Hettinger?
A. That is correct, yes, sir.
Q. And where do you live and what is your occupation?
A. I live at Palatine, Illinois, which is a suburb of Chicago, and I am special accountant on the staff of the vice-[fol. 1192] president in charge of financing and accounting.
Q. Of what company?
A. The Chicago, Milwaukee, St. Paul and Pacific Railway Company.
Q. And is your office in Chicago?
A. Yes, sir, in the Union Station.
Q. And, will you state briefly what your railroad experience has been?
A. Well, I have worked for the Milwaukee Road for almost 21 years. I was in the car accountant's office for one and a half years, and I spent twelve and a half years in the freight accounting department, and approximately six and a half years in the present office.
Q. And what, generally, do your duties include at the present time with regard to compilation of statistical and financial data of various sorts?
A. Well, sir, we make any studies that are required by the legal or the operating departments of the Railroad, and compile monthly and yearly statistics that are used to measure operating efficiency and the financial status of the company.
Q. And did you, during the course of your employment in the office of the freight accounting department, did you work in connection with divisions between the Milwaukee Road and other lines?

A. Yes, sir, I did.

Q. For how long a period of time?

A. For two years.

[fol. 1193] Mr. Maguire: I may state, Mr. Examiner, in explanation of this witness, that at the time Mr. Kiley testified as to certain figures in the record at the Portland hearing as to what revenue would have accrued to the Milwaukee Road had all of the traffic shown in the Witness Nickels' Exhibit 1 been interchanged between the S. P. and S. and the Milwaukee at Spokane, as to what the increased revenue to the Milwaukee would have been under those circumstances, and at that time, I volunteered that we would have supporting figures to support the conclusions of Mr. Kiley introduced at a later hearing, and that is the purpose for this witness being called.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Maguire:

Q. Mr. Hettinger, did you work on or assist in the preparation of an estimate which was furnished in connection with testimony given by Mr. Kiley in the Portland hearing in this proceeding?

A. Yes, sir, I did.

Q. Have you prepared a statement in explanation of Exhibit 1?

A. Yes, sir.

Mr. Maguire: May I have this marked for identification, Mr. Examiner?

Exam. Dishman: Yes. It will be marked for identification as Complainant's Exhibit No. 18.

[fol. 1194] (Complainant's Exhibit No. 18, Witness Hettinger, was marked for identification.)

By Mr. Maguire:

Q. And will you proceed with that statement, please?

A. The estimate of the increase in revenue to the Mil-

waukee, if all of the shipments in Exhibit No. 1 had been interchanged between the Spokane, Portland and Seattle and the Milwaukee at Spokane, has been prepared on as conservative a basis as possible.

Before going into detail, it should be helpful to have a general picture of the bases we have used.

In this computation merchandise divisions were used. In some cases these divisions were estimated. Shipments were grouped according to territories of origin, destination and junctions.

Q. May I interrupt. In the text prepared by you, after the word "merchandise", you omitted reading the words "class and column."

A. Yes, sir. I want to emphasize that.

Q. There were no lumber divisions or grain divisions or any divisions like that used in this computation?

A. That is right.

Q. Let us take lumber, for example. Have you informed yourself as to what would have been the impact upon the exhibit if lumber divisions rather than class and column divisions had been used? Would the estimate of increase in revenue be increased or diminished?

[fol. 1195] A. Well, sir, in the case of traffic moving from or to eastern lines, the estimate that I have used is greater than what the actual division would have been. In other words, I have allowed eastern lines what I think would be a high percentage of the revenue of transcontinental lumber.

Q. Yes. But, now, as to shipments of lumber which terminated west of Chicago, what effect does this basis have upon what the amount would have been?

A. I am afraid I can't answer that question.

Q. Can you determine that and return this afternoon with that?

A. Yes, sir, it is quite possible.

Q. All right. Go ahead.

A. On traffic moving between points on the Spokane, Portland and Seattle Railway proper and points on the Milwaukee between Minnesota Transfer and Chicago, 16½ per cent was first taken out of the charges for the haul between Minnesota Transfer and the point east of the Transfer. This left for division, between the carriers par-

ticipating in the haul between Minnesota Transfer and the S. P. and S. point, 83½ per cent of the freight charges on each such shipment. This was divided between the Milwaukee and the S. P. and S. on the basis of a straight mileage pro-rate with a minimum of 25 per cent of the Minnesota Transfer to Coast point revenue for the shorter line, which in all cases would be the S. P. and S. Since the mileage pro-rate in all of the shipments here involved would produce less than the 25 per cent minimum, the latter was [fol. 1196] used.

On shipments originating or terminating on the Oregon Trunk or Oregon Electric, a further division was made to the appropriate originating or terminating line, consisting of twenty per cent of the revenue allocated to the haul between Minnesota Transfer and the western origin or destination. After the twenty per cent was apportioned to the Oregon Trunk or Oregon Electric, the balance was divided between the S. P. and S. proper and the Milwaukee on the aforementioned basis.

On traffic moving between points on the S. P. and S. and points on foreign lines east of Chicago, a division of 23 per cent for the eastern connection was used, which, from a study of the movements here involved, would be a liberal average division to the eastern lines. This left 77 per cent of the revenues to be divided between the carriers west of Chicago, that division being made in the same manner as previously indicated with respect to traffic between S. P. and S. points and Milwaukee points east of Minnesota Transfer.

With these basic percentages in mind, it will be simpler to follow the computations which follow in more detail.

As shown by Witness Nickels' Exhibit No. 1, the Milwaukee Road, during the year 1952, handled 6,384 carloads which either originated or terminated on the lines of the S. P. and S., Oregon Trunk or Oregon Electric Railroads. Of these carloads 5,629 were interchanged from or to the Milwaukee Road at Minnesota Transfer and only involved [fol. 1197] movement on the Milwaukee, east of that point. There were 525 cars on which the Milwaukee did receive the long haul and did interchange at Spokane. The remaining 230 cars moved via many different routes and junctions,

all of which junctions were at substantial distances east of Spokane.

Revenue from traffic originating or terminating on the Milwaukee Railroad east and south of Minnesota Transfer and west and north of Chicago was divided 16½ per cent east and 83½ per cent west of Minnesota Transfer. The 83½ per cent west was divided over Spokane, 75 per cent to the Milwaukee and 25 per cent to the S. P. and S. The Milwaukee Road division on this traffic was 16½ per cent plus 75 per cent of 83½ per cent. On traffic in this group which had its origin or destination on the Oregon Trunk or Oregon Electric, the appropriate road was allowed 20 per cent of 83½ per cent, the S. P. and S. 25 per cent of 80 per cent of 83½ per cent, and the Milwaukee 16½ per cent plus 75 per cent of 80 per cent of 83½ per cent.

On traffic originating or terminating on the Milwaukee Railroad west of Minnesota Transfer and having its origin or destination on the S. P. and S., the revenue was divided 75 per cent to the Milwaukee and 25 per cent to the S. P. and S. On traffic in this group having its origin or destination on the Oregon Trunk or Oregon Electric, the road involved was allowed 20 per cent of the freight charges with the S. P. and S. receiving 25 per cent of 80 per cent and the Milwaukee 75 per cent of 80 per cent.

[fol. 1198] Revenue from traffic originating or terminating on the Terre Haute Division of the Milwaukee Railroad, south and east of Chicago, the division to the Milwaukee Road was 13 per cent applying east of Chicago plus 16½ per cent of 87 per cent to Minnesota Transfer plus, on traffic to or from S. P. and S. points, 75 per cent of 83½ per cent of 87 per cent to Spokane. The latter division, if the movement was to or from points on the Oregon Trunk or Oregon Electric would be 75 per cent of 80 per cent of 83½ per cent of 87 per cent applying to Spokane.

No increase in revenue was computed on carloads which originated or terminated on the Milwaukee Road and which were actually interchanged between the Milwaukee and S. P. and S. at Spokane as practically all of this traffic moved on through rates, the revenue picture would be unchanged.

Revenue from traffic originating or terminating on foreign lines east of Minnesota Transfer and west of Chicago, via various junctions, from or to points on the S. P. and S., was divided 16½ per cent east and 83½ per cent west of Minnesota Transfer. An estimated division of 50 per cent of the 16½ per cent was used to divide the revenue accruing east of Minnesota Transfer between the Milwaukee and the foreign line. The 83½ per cent applying west was divided 75 per cent to the Milwaukee and 25 per cent to the S. P. and S.

On traffic originating or terminating on foreign lines east of Chicago and moving via Milwaukee Road junctions south [fol. 1199] or east of Chicago, the Milwaukee division was 20 per cent of 23 per cent to apply to the haul between the junction and Chicago, 16½ per cent of 77 per cent to apply to Minnesota Transfer and 75 per cent of 83½ per cent of 77 per cent to Spokane.

On traffic originating or terminating on foreign lines east of Chicago which moved via junctions located between Chicago and Minnesota Transfer, the foreign lines handling the traffic to or from that junction were allowed their portion of the revenue accruing between Chicago and Minnesota Transfer for their part of that haul. The Milwaukee received the balance of the Chicago-Minnesota Transfer revenue.

Revenue on traffic originating or terminating on foreign lines east of Chicago which moved via Chicago junctions, Chicago, Milwaukee, Spaulding, Joliet, Rondout, and so forth, was allocated to the Milwaukee Road on the basis of 16½ per cent of 77 per cent Chicago to Minnesota Transfer and 75 per cent of 83½ per cent of 77 per cent to Spokane.

No increase in revenue was computed on traffic which originated or terminated on foreign lines which actually was interchanged between the Milwaukee and the S. P. and S. at Spokane.

These divisions were applied to the freight charges on traffic shown in Exhibit No. 1 and the total estimated revenue to the Milwaukee Railroad was found to be $3,382,755. This amount reflects a possible increase in Milwaukee revenue of $2,532,339 when compared with the $850,416 actually received.

[fol. 1200] Q. Now, Mr. Hettinger, when you add the last two figures named, do they total the $3,382,755 which you mentioned in the preceding line of your prepared statement?

A. Yes, sir.

Q. Now, if you will turn to the exhibit marked No. 18 for identification, will you state what that represents; what it is?

A. Well, sir, it is the computation that I referred to in the statement, and it shows, in the left hand side of the statement the number of carloads and freight charges and the actual Milwaukee Railroad revenue that we have obtained. The latter three columns are the columns which I used in obtaining the estimated revenue increase.

Q. That is the estimated revenue increase if all shipments had been interchanged at Spokane, do you mean?

A. That is correct, yes, sir.

Q. And is Exhibit 18 a prediction or merely a computation based in the manner you have above stated of the figures shown in Witness Nickels' Exhibit No. 1?

A. I would say it is merely a computation, yes, sir.

Q. And in breaking up the totals shown in Exhibit No. 1 —would you strike that question, please. Do the divisions showing the total number of carloads and the other data in the first three columns correspond with the divisions shown in Exhibit No. 1?

A. I don't recall any divisions being shown in Exhibit No. 1.

Q. No. Here is what I mean. I am not talking about [fol. 1201] divisions in the sense that you have used them, but I mean the sections of figures or blocks of figures shown in Exhibit No. 1?

A. No, sir, they wouldn't compare because where the shipments actually moved over the different junctions, I have grouped the cars so that they are routed via Spokane, and the divisions that I have used apply via the route via Spokane.

Q. Maybe I didn't make myself clear. As a matter of fact, I don't think I understood it myself to start with. But, when you take here your first heading in the extreme left-hand column originating on the C. M. St. P. and P., is the sum total originating on the C. M. St. P. and P. of 488, is

that the sum of similar divisions in Exhibit No. 1, or similar sections in Exhibit No. 1, except they are consolidated or added together so far as the S. P. and S. proper, the Oregon Electric and Oregon Trunk are concerned?

A. That is correct, yes, sir.

Q. Would the same observations apply as to the other figures shown on the fully capitalized headings shown in the lefthand column?

A. Yes, sir, they would apply.

Q. And it will be noted that there is a difference between these detailed figures that you have given here—I will withdraw that question for the moment. Did you examine the transcript of the testimony of Mr. Kiley at the Portland hearing?

A. Yes, sir, I have.

[fol. 1202] Q. And are the total figures given by him in all respects similar to those shown in your Exhibit 18?

A. No, sir. There have been some changes made. I have lowered the total increase by some three hundred thousand dollars.

Q. About a ten per cent reduction from his figures?

A. Yes, sir.

Q. And when this data was first furnished by Mr. Kiley, was the computation made in as fine detail as you have shown in this exhibit, or was it a rough estimate?

A. It was a rough estimate, yes, sir.

Mr. Maguire: You may cross-examine. Just a moment. Would you prefer, Mr. Examiner, that I wait until the end of the cross-examination before proffering the exhibits?

Exam. Dishman: Well, you might as well wait until after the cross-examination is completed.

Mr. Rockwood: I will not be prepared to go ahead with the cross-examination right now, because I haven't had a chance to look at this, but I would like to ask one or two preliminary questions, if I may, simply to assist us in studying the exhibit. Might I ask this, Mr. Examiner. We will undoubtedly be in session tomorrow.

Mr. Maguire: Yes. If you had the opportunity to examine this this evening, would you be able to complete your cross-examination of Mr. Hettinger before the hearing here ends?

Mr. Rockwood: I would hope so.

[fol. 1203] Mr. Maguire: Thank you.

Mr. Rockwood: But I would like to ask on this last point, Mr. Examiner.

Exam. Dishman: Proceed.

Cross examination.

By Mr. Rockwood:

Q. On this last point that Mr. Maguire was talking about of the estimate made by Mr. Kiley in the record, and the estimate as contained in this exhibit. At page 55 of the transcript of Mr. Kiley's testimony, he has this statement: "Our grand total increase in revenues would have been approximately $2,812,000." That is the figure with which you are comparing this figure in your exhibit of $2,532,339, and on the basis of your prepared statement is really about $300,000 less?

A. That is right.

Q. Those are the two figures that you are comparing?

A. That is right.

Q. I have before me a copy of Exhibit 1, and I haven't had a chance to study this carefully, of course, but there are one or two questions that I may want to ask you. May I ask this: Do you have a copy of Exhibit 1 before you?

A. Yes, sir.

Q. On your first block of data originating on the C. M. St. P. and P. you show a total of 488 cars. Can you tell us from Exhibit No. 1 where we will find the same 488 cars?

A. Well, it would be a total of—Well, on page 2, sir, the [fol. 1204] total of cars which originated on the Milwaukee Road and terminated on the S. P. and S., that would be 434 cars.

On page 8 would be the cars that originated on the Milwaukee Railroad and terminated on the Oregon Trunk, which would be eight cars, and on page 10, forty-six cars originated on the Milwaukee Railroad and terminating on the Oregon Electric. Now, the total of 434, 8 and 46 would total to the 488 cars.

Q. Well, is the pattern or derivation of that figure fol-

lowed with respect to the others? In other words, in your second block of figures, you had terminating on the C. M. St. P. and P. a total of 3319 cars. Is that the total of the three figures shown in Exhibit 1, respectively, for the S. P. and S. proper, the Oregon Trunk and the Oregon Electric; is that right?

A. Yes, sir.

Q. And that is also true of the last two divisions of the exhibit?

A. Yes, sir.

Q. Have you verified the fact, and is it a fact that your grand total cars of 6,384 shown in the last line of the first column of figures, the total of all the cars in Mr. Nickels' Exhibit No. 1, Mr. Hettinger?

A. No, sir. If you will recall, at the Portland hearing, there was a correction made in Exhibit 1 of one car that really originated on the Spokane International, I believe it was, and the actual total of Exhibit one was changed from 6385 to 6384.

[fol. 1205] Q. Then the figures do check?

A. Yes, sir.

Q. Do you have all of your work sheets regarding this exhibit, or underlying this exhibit?

A. Yes, sir.

Q. Would they be comprehensible to another statistician?

A. Yes, sir, I believe so.

Q. They are not made by a machine process?

A. Oh, no.

Q. Which wouldn't be understandable unless we had a machine to play it back; it is not one of those?

A. No, sir, they would be perfectly legible.

Q. Did you have before you, when you prepared this Exhibit 18, the work sheets of Mr. Nickels underlying Exhibit No. 1?

A. Yes, sir—Well, not entirely. I had, I would say, ninety-five per cent of his detail.

Q. Are those work sheets now available?

A. Yes, sir, I believe so.

Q. Are they comprehensible to another statistician, or were they made by some machine process and we would have to have the machine in order to play them back?

A. I am afraid something would have to be done. It is an awfully large stack of papers. It is about that high (indicating).

Q. Did you assist Mr. Nickels in the preparation of Exhibit No. 1?

A. No, sir, I did not.

[fol. 1206] Q. You are not familiar with the detail underlying his exhibit, except you have examined some of it in the preparation of your Exhibit No. 18; is that correct?

A. Well, I would say I am familiar with it as far as his details are concerned, because I did put in some time in his office a few years back, and I am familiar with his work.

Mr. Maguire: I wonder if the witness understands the question, Mr. Rockwood? I don't believe that he does, and might I interject a couple of questions at this point for clarification?

Mr. Rockwood: Yes, sir.

Mr. Maguire: Did you go over his work sheets or did you merely refer to them as occasion might arise; that is, the work sheets of Mr. Nickels?

A. I referred to them.

Mr. Maguire: Then when you say you are familiar with them, do you mean you are familiar with the general principles, or do you mean you are familiar with his work sheets themselves in this particular case? Are you familiar with the general process?

A. Well, I am familiar with the process.

Q. Yes.

A. But as far as being familiar with the work sheets, all I did was to make spot checks to try to verify some of the answers that I obtained in this exhibit.

Mr. Maguire: Pardon the interruption, Mr. Rockwood.

Mr. Rockwood: Those are all of the questions that I have [fol. 1207] at this time, but I would like to defer the balance of my examination until I have had the further opportunity, with my associates, to examine this Exhibit 18.

Exam. Dishman: With that thought in mind, you will be prepared to complete your cross-examination, say, tomorrow morning?

Mr. Rockwood: I certainly hope so.

Mr. Maguire: Mr. Hettinger will be available for that purpose, Mr. Examiner.

Exam. Dishman: Are there any other questions on cross-examination at this time by anybody else?

Mr. Golden: I think that all of us would like to defer any questions we might have.

Exam. Dishman: All right. Is that all, Mr. Maguire?

Mr. Maguire: That is all I have now from Mr. Hettinger. I will withhold the offer of the exhibit until the cross-examination is entirely completed.

Exam. Dishman: All right. The witness is excused.

(Witness excused.)

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. We will take a recess until two o'clock.

(Whereupon, at 12:30 o'clock p.m., Thursday, November 11, 1954, a recess was taken to 2:00 o'clock p.m., of the same day.)

[fol. 1208] AFTER RECESS 2:00 p. m.

Exam. Dishman: The hearing will come to order, gentlemen. Call your next witness.

Mr. Cockrum: I will call Mr. Pease.

J. L. PEASE was sworn and testified as follows:

Direct examination.

By Mr. Cockrum:

Q. Have you been sworn?

A. Yes, sir.

Q. Will you please state for the record your name, residence, and position; your transportation background, and the position of the Department of Agriculture in this case?

A. My name is J. L. Pease. I am the Assistant Chief of the Freight Rate Service Branch, Agricultural Marketing Administration, United States Department of Agriculture, Washington, D. C.

I have been in my present or similar positions with the Department for fourteen years. From 1936 to 1940, I was traffic consultant on the Pacific Coast. From 1926 to 1936, ten years, I was traffic manager for a large fruit and vegetable fruit growing and shipping organization with interests in the states of California, Arizona, New Mexico, Idaho, Colorado, Washington and Oregon. Prior to that, for ten years, I was employed by the New York Central Railroad's subsidiary, refrigerator car subsidiary, the Merchants Despatch, Inc.

I am familiar with the issues in this proceeding, which [fol. 1209] involve the opening of the Spokane Gateway, with interchange of traffic between the Milwaukee Railroad and the S. P. and S., and its subsidiaries, at the joint through competitive freight rates now enjoyed by other S. P. and S. connections at Spokane or west thereof.

Mr. Torinus: Are you reading from a prepared statement, Mr. Pease?

The Witness: No, these are just some notes that I made.

Mr. Cockrum: These are just some notes he jotted down.

Mr. Torinus: All right.

The Witness: I have been authorized to appear and submit in behalf of the Secretary of Agriculture of the United States, certain facts which we believe will assist the Commission in its disposition of the issues. The Department of Agriculture supports the complainant in this proceeding. We believe that the exclusion of the Milwaukee Railroad from a free participation in the flow of traffic to or from the S. P. and S. prohibits a flexible and desirable liquid distribution of agricultural commodities and farm supplies. With the high level of agricultural products now existing in the United States, any restrictive device such as a continued closure of so important a gateway as Spokane between two such important railroads as herein mainly involved can have no other effect than to restrict distribution and reflect unfavorably on the economy of the agricultural community.

[fol. 1210] By Mr. Cockrum:

Q. Mr. Pease—

Mr. Cockrum: Mr. Examiner, may I have these marked for identification, please?

Exam. Dishman: They will be marked, respectively, Interveners' Exhibits Nos. 19 through 22, both inclusive, for identification.

(Interveners' Exhibits 19 through 22, inclusive, Witness Pease, were marked for identification.)

By Mr. Cockrum:

Q. Mr. Pease, there have been identification in this case, Exhibits 19 through 22, inclusive. Were all of these prepared by you or under your supervision or at your direction?

A. Yes, sir.

Q. Will you proceed to your discussion of these exhibits, making any comments which you might wish to make with respect to them, beginning first with Exhibit No. 19?

A. Exhibit No. 19 shows statistically and by graphic representation the changes in and growth of the population of the United States from 1920 to 1950, the last official Census. To make the exhibit conform more closely to railroad rate revenue, I have separated the states according to rate bureau groupings, as far as possible.

For instance, page 2, the top line, indicates a 42.57 per cent increase in total population of the United States, 1950 over 1920.

Similarly, page 2 shows a 15.29 per cent increase in population in commonly called Western Trunk Line terri- [fol. 1211] tory, and a 119.74 per cent increase in the territory known as the Mountain-Pacific States; all 1950 over 1920. The latter increased 5,681,000 from 1940 to 1950. The additional almost six million people require more locally produced food supplies, plus additional imports from other producing areas, some of which lie along the lines of the complainant, and some on the lines of its connections.

The map on page 3 of Exhibit 19 shows, in graphic form,

the changes in population, percentagewise, from 1940 to 1950, according to the Bureau of the Census.

The United States, as a whole, increased 14.5 per cent, but Oregon increased 39.6 per cent, and Washington 37 per cent.

I might say that this map, page 3, is a reproduction of a map produced and put out by the Bureau of the Census of the Department of Commerce.

Page 4 is likewise a reproduction of the Department of Commerce, Bureau of the Census, map, and shows the change from 1950 to 1953, indicating an over-all increase in the United States of 5.1 per cent, while Oregon was up 7.1 per cent and Washington was up 5.9 per cent. These figures for 1953 are as estimated by the Bureau of the Census, under their established methods of procedure.

We turn now, please, to Exhibit No. 20, which consists of 21 pages, and is a statistical record of the production of agricultural commodities, livestock and fishery products [fol. 1212] in the areas served by both complainant and defendants.

The purpose of this exhibit is to acquaint the Commission of the extent of potential agricultural tonnage which may be involved. We have not attempted to go beyond the eastern termini of the complainant to the area served by its connections because that would involve almost all of the United States.

Page 3 of Exhibit No. 20 shows the production of wheat available for sale in Iowa, Minnesota, Montana, South Dakota and Wisconsin, available for westbound movement, and in Oregon and Washington available for eastbound movement for the years 1939 to 1953, inclusive.

Page 4 shows the same information for barley.

Page 5 for rye.

Page 6 for corn; and

Page 7 for oats.

Reference only to the 1953 line on each of these pages indicates that the potential of those grains is significant. I would like to call attention, parenthetically, if I may, that at the bottom of page 3, the last line, the page number for the source has been omitted. If, in that particular space

on pages 3 to 6, you will insert the page 7, that will show the authorities for these figures as shown on page 7.

Mr. Rockwood: That covers pages what to what?

The Witness: Pages 3, 4, 5 and 6.

Mr. Rockwood: The source for those pages is shown on page 7?

[fol. 1213] The Witness: Yes, sir.

The record now shows that westbound grains on the Milwaukee Road, necessarily stopping at Spokane for inspection to comply with the law, may not be moved on into Portland by the S. P. and S. at except the combination of local rates over Spokane.

Mr. Rockwood: What record shows that?

The Witness: The record in this case.

Mr. Rockwood: You are arguing from the testimony of other witnesses, I understand.

Mr. Maguire: Did you say arguing?

Mr. Rockwood: Yes.

The Witness: This is not true of other S. P. and S. eastern connections.

Mr. Torinus: What was the last statement?

The Witness: This is not true of other S. P. and S. eastern connections.

Mr. Torinus: Meaning what?

The Witness: Meaning Great Northern and Northern Pacific grain coming into Spokane, but moving out to Portland without the combination rate applicable.

Mr. Torinus: That doesn't include the S. I., for example, or the Union Pacific?

The Witness: I am not so sure about those, Mr. Torinus.

Mr. Torinus: All right.

The Witness: Realizing that state-wide figures showing [fol. 1214] production might be rather misleading, we tried to obtain from the State Departments of Agriculture more localized statistics, so that we might tie those in with the actual territory served by complainant and defendants.

Page 8 is a resume of the information obtained from the State of Montana. We have separated the production of the five major grains and livestock for the counties contiguous to the Milwaukee Railroad as shown in Reference 1 of page 8 of Exhibit 20.

Livestock population for 1952 and 1953 was not available. Through joint competitive rates do not apply via the Milwaukee-S. P. and S. to Spokane on those grains, but do apply on livestock.

Page 9 shows production, in thousands of pounds, of apples, pears and potatoes in Washington and Oregon available for eastbound movement, 1939 to 1953, inclusive.

Page 10 shows production of various fruits and vegetables in Washington and Oregon, primarily for canning, drying and fresh for 1939 to 1953. The varieties included are as indicated in Notes 1, 2, 4 and 5. Not all of these commodities shown on pages 9 and 10 are susceptible to movement via Spokane and the Milwaukee Railroad, but we were unable to segregate the county statistics in this instance.

Pages 11 and 12 show the production of poultry available for sale, such as chickens, broilers and turkeys, for sale, 1939 to 1953, inclusive, in the states of South Dakota and Montana, for westbound movement, and in the states of [fol. 1215] Oregon and Washington for eastbound movement. Here we were also unable to segregate the information by counties. The over-all production, however, is substantial.

Page 13 shows the egg production.

Page 14 shows the cheese production; and

Page 15 shows the butter production, for the same states for the same period. They show substantial amounts available for both eastbound and westbound movements, although the county breakdown was not available.

Page 16 on Exhibit 20 shows the number of horses and mules on the farms in Wisconsin, Minnesota, Iowa, South Dakota and Montana for the period 1939 to 1954, inclusive;

Page 17 shows the production, in thousands of pounds, of cattle and calves;

Page 18 of sheep and lambs, and page 19 of hogs, for the same states for the period 1939 to 1953, inclusive. Here again we were unable to break these figures down to a county basis. However, the tonnage of these animals available for westbound movement is impressive, and none may move to points on the S. P. and S. via the Milwaukee Road, through Spokane.

Mr. Rockwood: May I interrupt? What was that last statement?

(The record was read.)

Mr. Rockwood: You say none may move?

The Witness: Yes.

Mr. Rockwood: Because of the rate situation or because [fol. 1216] of lack of demand, do you know?

The Witness: Well, I presume both, sir. I doubt if there is very much demand for those particular commodities on the S. P. and S., except you might have a dog food factory out there.

Mr. Torinus: While we are interrupting you, Mr. Pease, I didn't quite understand what commodities you meant by "none". What commodities were you referring to?

The Witness: Horses and mules.

Mr. Torinus: Thank you.

The Witness: Through some oversight, we neglected to show, in exhibit form, the production on the Census of livestock in the States of Oregon and Washington. We were making exhibits for three or four cases at the same time, and I hope some pages in a refrigerator case doesn't wind up with a lot of stuff on livestock.

So with the Examiner's permission, I would like to read into the record, the livestock on farms, as of January 1, for the years 1950 to 1954, inclusive.

Mr. Rockwood: What page of this exhibit does this supplement?

The Witness: It is not on there.

Mr. Rockwood: You show it for some of the other states?

The Witness: Yes, sir, I show it for Minnesota, Wisconsin, Iowa, South Dakota and Montana.

Mr. Rockwood: What page?

The Witness: Pages 17, 18 and 19.

[fol. 1217] Mr. Rockwood: Excuse me. I want to get this figure.

The Witness: This data is taken from Statistical Bulletin 143, United States Department of Agriculture, Agricultural Marketing Service, Livestock Division, June, 1953. The publication is entitled "Livestock, Market News, Statistics and Related Data, 1953."

Mr. Maguire: Could I ask a question for clarification, Mr. Cockrum?

Mr. Cockrum: Yes, sir.

Mr. Maguire: When you use the word "livestock", just to make sure the record is definite on it, what do you include in that term?

The Witness: Cattle and calves, hogs, including pigs, stock sheep and lambs, horses and mules.

Mr. Maguire: I see. These will be the total figures for all of those categories?

The Witness: Those will be the annual figures. If the Examiner wishes me to put in the hog information and the horse and mule information, I will be glad to do that. However, I thought you might want to confine it to cattle and calves and sheep.

Mr. Maguire: I wanted to be clear on it.

Mr. Cockrum: So the record shows that the figures are confined to?

The Witness: Yes, sir.

[fol. 1218] Total cattle and calves, on farms, January 1, 1954— Excuse me.

On farm, January 1, 1950— This is for Washington now. I will read all of the Washington figures first.

1950—851,000.

1951—885,000.

1952—956,000.

1953—1,052,000.

1954—1,084,000.

Total cattle and calves on farms in Oregon, on January 1:

1950—1,085,000.

1951—1,096,000.

Mr. Torinus: What is that now? The first was cattle and calves?

The Witness: These are still cattle and calves, but in Oregon, Mr. Torinus.

Mr. Torinus: I see. I have Washington. These are in thousands of pounds?

The Witness: These are in thousands of head.

1952—1,238,000.

1953—1,374,000.

1954—1,429,000.

The same information for stock sheep and lambs: On farms, January 1, in Washington:

1950—271,000.

[fol. 1219] 1951—290,000.

Mr. Rockwood: Excuse me. 1950 was 251,000?

The Witness: Yes, sir.

1951—290,000.

Mr. Rockwood: All right.

Mr. Torinus: This is sheep?

The Witness: Stock sheep and lambs.

Mr. Torinus: For Washington?

The Witness: For Washington.

Mr. Torinus: All right.

The Witness: 1952—304,000.

1953—304,000.

1954—295,000.

Stock sheep and lambs on farms in Oregon, January 1:

1950—671,000.

1951—637,000.

1952—682,000.

1953—682,000.

1954—682,000.

All of these 1954 figures are flagged in this report as preliminary, subject to revision.

Mr. Torinus: I notice on pages 17 and 18, Mr. Pease, that you say your figures are in thousands of pounds on the exhibit?

The Witness: That is right, yes, sir.

Mr. Torinus: Do I understand this figure is number of head?

[fol. 1220] The Witness: These are numbers of head, yes, sir.

Mr. Torinus: So there isn't any real basis of comparison?

The Witness: That is right, there isn't any real basis of comparison.

Mr. Rockwood: Do I understand— Oh, yes, I follow you. These are head.

The Witness: You will note the figures on horses and mules on page 16 are on head, too. That was in thousands of head. That was not mentioned in pounds.

Canned salmon, tuna and crab, frozen fish, fish meal and fish oil, all of which originated in respectable volume; much of which moves eastbound. This tonnage may not move

S. P. and S. via the Milwaukee on the joint through competitive rates as enjoyed by other connections of the S. P. and S.

Exhibit 21 is an analysis of the export tonnage of agricultural products or closely allied therewith, which moved through the ports of Astoria, Oregon, page 1, Portland, Oregon, page 2, and Vancouver, Washington, page 3, compiled from annual reports of the Chief of Engineers, U. S. Army, for the years 1939 to 1952, inclusive. The 1953 figures are not yet available, or were not available when the exhibit was compiled. The actual origins of these commodities are not available in the records of the U. S. Engineers. However, I would like to call the attention of the Examiner and the Commission to the sizeable tonnages of wheat, wheatflour and other flour, and grains through [fol. 1221] the Ports of Astoria, Vancouver and Portland for the period reported here. I am sure there are many commodities on here which would not move in connection with the Milwaukee-S. P. and S. However, I didn't want to be accused of trying to hide any figures, so I put them all in.

Exhibit 22 is a—

Mr. Cockrum: May we go off the record for just a moment, Mr. Examiner?

Exam. Dishman: All right. Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Cockrum:

Q. Will you please proceed, Mr. Pease, with your analysis of Exhibit 22?

A. Exhibit 22 is a little rate statement to indicate the conditions surrounding the shipments of livestock from points in Washington and Oregon to eastern destinations, and set off in transportation for feeding.

On page 1 we use the origin of Washtucna, Washington, a point on the S. P. and S., and stopping for grazing in transit at Browning, Montana, on the Great Northern, and reshipped to St. Paul, Minnesota, after grazing, as a charge of $272.00 for freight charges, and $11.34 for stopping in transit charge.

The same charge, where the same carrier route was used from Washtucna to St. Paul, and stopped to graze in transit at Trout Creek, Montana, on the Northern Pacific, it [fol. 1222] accrued the same charges at St. Paul, $283.34.

A similar car, originating at Washtucna, Washington, and stopped at Pocono, Idaho, on the Milwaukee, would be subject to a feeder cattle rate from Washtucna to Pocono of 38½ cents per 100 pounds, minimum 20,000 pounds, plus a fat cattle rate from Pocono to St. Paul of $1.23 per 100 pounds, or a total of $323.00, which is $39.96 per minimum carload of 20,000 pounds in excess of the charges that same shipment would have accrued via the S. P. and S.-Great Northern or Northern Pacific.

Page 2 traces the same movement through to Chicago, under similar circumstances, and in which case the car, moving via the Milwaukee, would incur an additional charge of $48.96, if my subtraction is correct—no, $41.96.

Pages 3 and 4 trace a carload of sheep from Bend, Oregon, a station on the S. P. and S., or a subsidiary of the S. P. and S., through to St. Paul, under similar circumstances, stopping in transit to graze, where we find that the route via the Milwaukee, being subjected to the combination of the feeder rate in and the fat rate out, would incur an excess charge of $76.64 to St. Paul.

A similar movement from Bend, Oregon, to Chicago would incur an extra charge of $72.66.

By Mr. Cockrum:

Q. Mr. Pease, are Chicago and St. Paul major destinations for sheep?

A. Yes, sir.

[fol. 1223] Q. From Washtucna and Bend?

A. Yes, sir.

Q. What have you to say with respect to them as representative origins?

A. I would say that Washtucna and Bend are representative origins for sheep in the States of Washington and Oregon, Southern Washington and Oregon.

Q. What have you to say with respect to Browning, Trout Creek and Pocono as stopping in transit points for feeding?

A. I have been informed that they are advantageous points for feeding in transit service.

Mr. Cockrum: That is all I have. Do you have any questions, Mr. Maguire?

By Mr. Maguire:

Q. As to Exhibit No. 22, and this is more in the nature of clarifying my own thought on it that these rates and the differences are the basic rates, and to them should be added the Ex Parte 175 increase all the way through on all pages of that exhibit?

A. That is correct.

Q. That applies to all of the pages?

A. Yes, sir.

Mr. Maguire: I have no further questions.

Mr. Cockrum: The witness is available for cross-examination.

Exam. Dishman: You may cross-examine.

Mr. Rockwood: Thank you.

[fol. 1224] Cross examination.

By Mr. Rockwood:

Q. On your Exhibit 20, page 3, you show the production in thousands of bushels of wheat in various states, including Oregon and Washington wheat.

A. Yes, sir.

Q. Is there any difference in the characteristics of the wheat raised in Washington and Oregon from that raised in Montana?

A. I understand that there is.

Q. The Oregon and Washington wheat is soft wheat, is it not?

A. Yes, sir.

Q. Where is that soft wheat marketed, Mr. Pease?

A. I do not know where it is marketed now, but they used to market a lot of it in the middle west for blending purposes.

Q. The fact is that now almost all of that wheat moves westbound to Portland and other terminals, does it not?

A. I think because of the rate, particularly as it now exists on grain, that is correct.

Q. So that movement of that wheat, in so far as you know, is available for eastbound movement via the Milwaukee or via any other line?

A. I think it is available.

Q. But it doesn't move?

A. I don't think very much of it moves now.

Q. And very little of it, if any, moves via the northern lines east of Spokane?

[fol. 1225] A. Well, I couldn't be too sure about that, but I do know that in an effort to move some of that grain from Oregon and Washington back to its natural consuming centers in the midwest milling areas, that the transcontinental railroads just lately made a rate reduction. Now, whether that has moved any grain, I am not in a position to say now.

Q. The normal movement, however, of Oregon and Washington soft wheat is westward, is it not, so far as you know, westbound?

A. I don't think one hundred per cent of it is moved westbound, no, sir.

Q. But, so far as you know, the vast majority of it goes westbound?

A. I would presume that is correct.

Q. Is any soft wheat raised along the Milwaukee in Washington?

A. I don't know.

Q. Is there any soft wheat raised along the S. P. and S. in Washington?

A. I don't know.

Q. Is any soft wheat raised on the S. P. and S. in Oregon or on any of its lines?

A. I don't know.

Q. Where is the soft wheat territory in Oregon and Washington?

A. So far as I know, the states of Oregon and Washington. I can't break it down any finer than that.

Q. So far as you know, it may be in the Willamette Valley or west of the Cascade Mountains?

[fol. 1226] A. It could be.

Q. You show, on the same page production of wheat in Montana of 107,000 bushels—107,982 bushels?

A. Yes.

Q. That includes production along the lines of the Great Northern, Northern Pacific and Milwaukee, does it not?

A. That includes all of the wheat production in Montana on any lines.

Q. That would be characterized as hard wheat, in so far as it is grown along the lines of the Great Northern, is that right?

A. I think so.

Q. And, what is the character of the wheat along the Northern Pacific farther south down in Montana?

A. I don't know.

Q. Is it spring or winter wheat?

A. I don't know.

Q. What kind of wheat is grown along the territory reached by the Milwaukee, spring wheat or winter wheat?

A. I am not enough of a marketing expert to answer that; I don't know.

Q. Is it raised on dry land or on irrigated land along any of these routes; do you know?

A. No, sir.

Q. You do not know? The answer is that you do not know, I take it?

[fol. 1227] A. That is right.

Q. If I should ask you the same general questions with respect to barley, rye, corn and oats produced in Oregon and Washington, as I have asked with respect to wheat, your answers would be the same as to your knowledge of the location of the areas in which these grains are raised; is that right?

A. Yes, sir.

Q. And your answer would be the same as to the direction in which these various grains moved to market; that is, where they move eastbound or westbound—well, let me be a little more specific on that.

A. All right.

Q. For barley, rye, corn and oats raised or produced in the State of Oregon, where is the principal market for those grains?

A. I should think that the principal market would be on the Pacific Coast.

Q. And the movement, in so far as they are produced, you say, east of Portland, would be a westbound movement?

A. I would think so.

Q. In so far as those grains are produced in the State of Oregon for such westbound movement, the Milwaukee couldn't touch them, could it?

A. No.

Q. They don't serve that territory?

A. That is right.

[fol. 1228] Q. Turn to page 9 of your Exhibit 20, will you please?

A. Yes, sir.

Q. In the first column, Washington apples. Where are the principal producing apple areas in the State of Washington?

A. The Wenatchee and Yakima areas.

Q. The Wenatchee area is served by what railroad?

A. The Great Northern, I believe.

Q. And the Yakima area is served by what railroad?

A. The Northern Pacific and the Union Pacific.

Q. And, in so far as the S. P. and S. and Milwaukee are concerned, neither of them can—the S. P. and S., I will say, can not move any traffic out of Wenatchee or out of Yakima?

A. That is right.

Q. Is there any apple producing territory along the S. P. and S. in the State of Washington?

A. I am not so sure whether some of that land up along the railroad doesn't produce some apples. As a matter of fact, I don't know.

Q. You do not know?

A. No, sir.

Q. All right. Let us take potatoes in the State of Washington. Are any potatoes produced along the line of the S. P. and S. in Washington?

A. I don't know.

Q. Are any potatoes produced along any of the lines of [fol. 1229] the S. P. and S. in Oregon?

A. I don't know. That I do not know.

Q. Turn to page 21. What is the vegetable producing area in the State of Oregon? Are vegetables produced?

A. In the State of Oregon?

Q. Yes.

A. Page what?

Q. Page 10 of your Exhibit 20. Excuse me.

A. I believe the area in and around Portland produces a considerable number of vegetables, also west thereof, but I do not know how far west, or east, I should say. I am sorry. And, I believe there are some produced on the Coast of Oregon, probably along the lines of the S. P. and S. subsidiary.

Q. Probably. Do you know where Tillamook County in Oregon is?

A. Yes, sir, approximately.

Q. What railroad serves Tillamook County?

A. I don't know that, sir.

Q. The town of Tillamook—I believe Mr. Maguire can verify it from the Guide—is served by the Southern Pacific, is it not?

Mr. Maguire: I don't have to look for that. I will agree with you on it.

Mr. Rockwood: And not by the S. P. and S.

By Mr. Rockwood:

Q. The territory in Oregon, in Portland and east thereof in Oregon, is served only by the Union Pacific, isn't it; the territory east of Portland, in Oregon, is served only by the [fol. 1230] Union Pacific?

A. I have forgotten which side of the River that is on?

Q. On the south bank, and the S. P. and S. is on the north bank in Washington.

A. That would be correct.

Q. Actually the S. P. and S., until you get over to territory east of the mountains, serves only the territory in Oregon east of Portland; is that correct?

A. I think that is correct.

Q. Do you know whether or not there are any vegetables

produced in the Willamette Valley between Portland and Eugene along the lines of the Oregon Electric?

A. I am under the impression that there are.

Q. And that territory is pretty well blanketed by Southern Pacific competition, as well as service by the Oregon Electric, is it not?

A. That is right.

Q. If I asked you with respect to the location, could you tell me what the vegetable producing areas are in the State of Washington?

A. Well, around the City of Seattle, between Seattle and Tacoma; between Tacoma and the mountains there is some. I believe there is some in Southern Washington, but to what extent I am not too sure. I was thinking of Rosebud, Oregon, which I forgot before.

Q. That is served by the Southern Pacific, and not by the [fol. 1231] Oregon Electric, is it not?

A. I believe that is correct.

Q. Of these territories you have referred to in the State of Washington, none is served by the S. P. and S. That is correct, isn't it?

A. I will say none that I know of.

Q. Yes.

A. None that I know of.

Q. Now, coming over to canned goods in Oregon on the same page. Where are the canneries located, if you can tell me, which produced the 52,000 tons of canned apples, peaches, pears, cherries, plums and cranberries, in the year 1953?

A. I think generally up the west coast of Oregon; probably in as far as 150 or 200 miles.

Q. Along the Southern Pacific?

A. Along the Southern Pacific, from Eugene down, yes, sir.

Q. And some canneries are located in the Willamette Valley, are they not?

A. Yes, sir.

Q. Served by both the Southern Pacific and the Oregon Electric?

A. Yes, sir.

Q. So far as the canneries served by the Southern Pacific and Oregon Electric are concerned, the Milwaukee couldn't hope to get business from those canneries out of this case, in so far as they are served by the Southern Pacific?

[fol. 1232] A. No, sir, not out of this case, I don't think it would get much, no.

Q. That would apply to dried fruits and frozen fruits, would it not?

A. Yes, sir.

Q. Is there any eastbound movement whatsoever from S. P. and S. points east of Spokane of poultry, do you know?

A. I don't know.

Mr. Maguire: From S. P. and S. points east of Spokane?

Mr. Rockwood: Yes, from S. P. and S. points to points east of Spokane. I asked him if he knew of any, and he said so far as he knew, there was no such poultry.

By Mr. Rockwood:

Q. Do you know where eggs are produced, and I am referring now to page 13 of your exhibit? Where are eggs produced in the State of Oregon, do you know?

A. No, I do not know where the production may be specialized, but I presume generally in the state.

Q. On the next page, do you know where cheese is produced in the State of Oregon?

A. Tillamook.

Q. Served by the Southern Pacific?

A. Yes, sir.

Q. There are some other cheese factories, but that is the well-known one?

A. There are some other cheese factories, but that is the [fol. 1233] well-known one, yes, sir.

Q. Where is butter produced in the State of Oregon? Page 15 of your exhibit?

A. I don't know.

Q. Page 17 of your exhibit, and I am referring particularly to the figures you read into the record to supplement the cattle and calves figures. What is the cattle and calf producing area in the State of Oregon, do you know?

A. I am not sure. I think it may be in Central and Northern Oregon.

Q. Do you know to what markets livestock raised in that area moves, Mr. Pease?

A. I don't know, sir.

Q. Do you know whether or not it is a fact that North Portland, where the Portland Union Stock Yards are located, is the principal market for livestock for Oregon raisers?

Mr. Maguire: Pardon me, Mr. Examiner. The witness said he didn't know where it moves, and now counsel is asking him whether he knows.

Mr. Rockwood: He can say whether he knows.

Exam. Dishman: You do not know. That was your answer; you do not know?

The Witness: May I have the question?

(Question read.)

The Witness: Yes. I didn't answer that question. I [fol. 1234] would say it is a large and important market. Whether it is a big one or not, I am not prepared to say.

By Mr. Rockwood:

Q. Do you know whether there is any movement of cattle and calves from points off the Oregon Electric eastbound to eastern livestock markets?

A. The Oregon Electric is the one that runs down to Bend; is that right?

Mr. Maguire: No.

By Mr. Rockwood:

Q. I said the S. P. and S., the Oregon Electric or the Oregon Trunk?

A. No, I do not know of any.

Q. Coming to sheep and lambs, on page 18 of your exhibit, and I am again referring to the figures for Oregon and Washington which you read into the record to supplement this exhibit, where are sheep and lambs produced in Oregon?

A. I believe about the same areas, the Central and Northern part of Oregon; the Central part of Oregon.

Q. Is there any production in the Willamette Valley of sheep and lambs?

A. I don't know.

Q. Do you know where the sheep and lambs produced in Oregon move? Do you know?

A. The final destination, do you mean, sir?

Q. Yes, what market do they move to?

A. I can only answer that from what I have been told, [fol. 1235] if that will be satisfactory.

Q. No, that wouldn't be satisfactory.

A. I was afraid that it would not be.

Q. With due deference to you, Mr. Pease, that wouldn't be satisfactory.

A. All right.

Mr. Maguire: Is it your theory that he has to see the Washington shipments actually move before he can testify?

Mr. Rockwood: If he knows of his own knowledge. If he has made any study, he can tell the results of the study he made, or any investigation that he may have made, but simply to repeat what he has been told by his friends on the Milwaukee in the last day or so, I don't want that.

The Witness: I have other friends, too, Mr. Rockwood.

Mr. Rockwood: I have no doubt of that.

The Witness: One moment, please. In the Interstate Commerce Commission Carrier Waybill Statistics for 1953, of the distribution of animals and other products, a one per cent sample for the year 1953, shows, for instance, sheep, Oregon to Montana, one car, which means one hundred cars; Oregon to Idaho one car, which means one hundred; Washington to Minnesota, one car, or one hundred; Washington to Montana, two cars or two hundred; Washington to Wisconsin, one car, or one hundred; which would indicate to me, not being a livestock expert, that some of it does move to eastern destinations.

[fol. 1236] Q. Those were all railroads, I take it?

A. All railroads.

Q. Does it show for Washington to Oregon?

A. I believe it does. Washington-Oregon, one car, or one hundred.

Q. Does it show Oregon intrastate?

A. Oregon to Oregon?

Q. Yes.

A. One car or one hundred.

Q. Does it show, sir, how much of the production of sheep in the State of Oregon moves to the primary markets by truck?

A. No, sir.

Q. Do you know what that is?

A. No, sir. I would say it is moving is all.

Mr. Golden: You would say it was moving?

The Witness: Yes, sir.

By Mr. Rockwood:

Q. You did not give us any supplemental figures, I believe, for hogs produced in the States of Oregon and Washington. No such figures were read into the record by you, were they?

A. No, sir. If you want them, I have them right here.

Q. Is Oregon a substantial producer of hogs? I will be glad to have the figures.

A. In Oregon, on farms, January 1st, 1954, there were 101,000 hogs, including pigs.

Mr. Cockrum: That is for 1954?

[fol. 1237] The Witness: 1954.

Mr. Torinus: What was that figure again, please?

The Witness: 101,000. I could read all of these in the record, if you wish.

By Mr. Rockwood:

Q. Have you the Washington figure?

A. Washington, January 1, 1954, 80,000.

Q. Now, those are head?

A. Heads.

Q. Whereas the rest of your exhibit, page 19, is in thousands of pounds of hog production?

A. That is correct.

Q. Where, in Oregon, if you know, are hogs raised?

A. I don't know, sir.

Q. It goes without saying that you do not know whether they are raised along the S. P. and S. or some other railroad, or where they are raised?

A. That is right, I don't know.

Q. Page 20, please, of your Exhibit 20. Have you made any effort to determine the production of lumber in the states of Oregon and Washington, by counties or by areas?

A. I made an effort to get it from the State of Oregon, but I was unsuccessful.

Q. You couldn't find any such figures?

A. I wasn't able to obtain any such figures, no, sir.

Q. Do you personally have any information as to the [fol. 1238] distribution of lumber products in the State of Washington in various areas?

A. Not too definite, Mr. Rockwood. I think it is largely in Northern and Western Oregon, probably. I may be wrong about that.

Q. Well, isn't it a fact that the Southern Pacific serves the territories south of Eugene, which, by all odds, are the biggest producers of lumber in Oregon? Do you know that?

A. I do not know that it is the biggest. I know it is big.

Q. Will you please turn to your Exhibit No. 20. You called attention—

Mr. Maguire: That is Exhibit 22.

Mr. Rockwood: Yes.

By Mr. Rockwood:

Q. Will you please turn to your Exhibit No. 22. You called attention to the exports through—.

Mr. Cockrum: You mean Exhibit 21, do you not?

Mr. Rockwood: Yes, that is right. Excuse me.

By Mr. Rockwood (continuing):

Q. —the Port of Astoria, and you called particular attention to exports of wheat and flour. Are you able to tell us of the total exports through the Port of Astoria for any year which you show in your exhibit, what proportion of it

was soft wheat, and what proportion of it was wheat of another grade?

A. No, sir.

Q. Are you able to tell us what portion of the flour exports through the Port of Astoria was soft wheat flour and [fol. 1239] what portion was flour of another grade?

A. No, sir.

Q. And that would be true for all years shown on your exhibit?

A. Yes, sir.

Q. When we come over to the figures for the Port of Portland, and again referring to the wheat and wheat flour figures, can you tell us what proportion of the 994,000 tons of wheat which were exported or moved through the Port of Portland in 1952, was soft wheat and what was hard wheat?

A. No, sir.

Q. Are you able to tell us whether any of it was hard wheat?

A. There is no way in the world that I know of that it can be distinguished.

Q. The same with respect to wheat flour, do you know if any of that was hard wheat flour?

A. No, sir.

Q. Can you tell us whether any of it exported out of the Port of Portland originated in the State of Montana on any railroad? Can you tell us?

A. No, sir.

Q. And if I asked you the same questions with respect to exports through the Port of Vancouver, would you have any information more detailed than you have for the Ports of Astoria and Portland?

A. I would have no more information on it, no, sir.

[fol. 1240] Q. Now, coming to your Exhibit 22, and turning to page 3, please.

A. Yes, sir.

Q. Do you know whether or not at the present time there is any movement of sheep eastbound out of Bend, Oregon, for grazing in transit in Montana or Idaho, for movement on to the eastern markets?

A. Not of my own knowledge, no, sir.

Q. You say Bend is a representative point?

A. Yes, sir.

Q. Wasn't Bend picked by you as a representative point pretty much on a geographical basis rather than on any investigation you made of sheep production?

A. No, sir, I don't think that is correct. There are a lot of sheep raised in there, around Bend, as I understand it.

Q. Isn't it a fact that most of them move by truck to Portland?

A. That could very well be.

Q. And none move east for grazing and ultimate sale in the eastern markets?

A. I do not know that none of them do.

Q. You do not know what the facts are?

A. I do not know what the movement is.

Q. If there were some sheep moving out of Bend destined to St. Paul, those sheep could move over the Union Pacific to Marengo, Washington; thence Milwaukee, graze in transit along the Milwaukee, and then move on the joint [fol. 1241] through rate to South St. Paul on the Milwaukee at rates no higher than those you have shown for movements via the Northern lines?

A. I don't think so.

Q. You don't think so?

A. No, sir.

Q. Do you know?

A. I don't know for sure, but I don't think so.

Q. What is the volume, if you know, of the total eastbound movement, for grazing in transit, from all S. P. and S. points in Eastern Washington, between, we will say, Wooster and Spokane? Have you made any study to determine the volume?

A. I don't know. I have no idea, Mr. Rockwood.

Q. You do not know whether it was twenty cars or five hundred cars a year?

A. No, sir.

Q. How many sheep are loaded in a car, a twenty thousand pound car, double-deck, we will say?

A. I don't know that either.

Q. Nor do you know how many there would be in a single deck car?

A. No, sir.

Q. Is there any sheep production along the Milwaukee in Eastern Washington, do you know?

A. Eastern Washington?

Q. Eastern Washington along the Milwaukee?

A. I don't know.

[fol. 1242] Q. You do not know that?

A. No, sir.

Q. If there were any such sheep produced along the Milwaukee in Eastern Washington, could that sheep raiser ship Milwaukee to Spokane and thence Northern Pacific or Great Northern, to graze in transit, too— Could that be moved at the joint through rate to South St. Paul or Chicago? Could he do it, or do you know?

A. No, I don't know.

Mr. Rockwood: I have nothing further.

Mr. Torinus: I have one or two questions.

By Mr. Torinus:

Q. You spoke of the fact that there were no joint through rates, as I understand you, on grain moving westbound via the Milwaukee to Spokane; thence Spokane, Portland and Seattle, while the contrary was true with respect to other eastern connections, and you specified as eastern connections the Great Northern and Northern Pacific. Isn't it also true that there are no joint through rates on westbound grain via Spokane and the S. P. and S. beyond when the grain comes into Spokane over the Union Pacific? Do you know?

A. Yes, I think that is correct.

Q. It is correct that there are no such joint through rates?

A. I think so, yes, sir.

Q. And that is also true of any grain that comes in over the route comprised of the Soo Line, Canadian Pacific, Spokane International: isn't that correct?

[fol. 1243] A. I am not sure about that, Mr. Torinus.

Q. Now, did you make any study of the exports of agricultural products, which moved through ports on the

North Pacific Coast, served directly by the Milwaukee, such as Tacoma and Seattle, Bellingham, for example?

A. No, sir, I didn't.

Q. You do not know how that would compare with the exports through the Port of Astoria?

A. No, sir.

Q. I have been looking at the Agricultural Adjustment Act, Mr. Pease, and I notice the authority of the Secretary of Agriculture to appear in rate cases relating to the transportation of farm products. I wonder if you can tell me what your authority is to speak with respect to lumber?

A. Do you have the Interstate Commerce Act there, Mr. Torinus?

Q. Yes, I have.

A. May I see it, please.

Q. I am looking at page 295 of this compilation.

A. Yes, sir. I was under the impression 203-J of the Agricultural Marketing Act, 203 of the Agricultural Marketing Act was completely reproduced in here, but this is only Section J. Thank you. Do you have a copy of that?

Mr. Cockrum: I think that is probably a question that should be directed to counsel, Mr. Rockwood. In answer to the question which Mr. Torinus has asked, I would like to [fol. 1244] refer him to Section 207 of the Agriculture Marketing Act of 1947, which is one of the statutes under which we are in this proceeding.

Section 207 states:

"When used in this title, the term 'agricultural products' includes agriculture, vitacultural and horticultural and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products and any and all products raised or produced on farms, and any processed or manufactured product thereof."

Mr. Torinus: May I take a look at that, Mr. Cockrum?

Mr. Cockrum: Yes, sir.

Mr. Torinus: Well, without getting into an argument on this phase of the matter, Mr. Cockrum, I understand that there is a Forestry Service under the Department of Agriculture, but I was rather curious to know what specific

statute gave the Secretary of Agriculture a commission to appear in a freight rate proceeding before the Interstate Commerce Commission involving lumber, and I don't find that in 207, Section 207, as you read it to me. Nor, do I find it with respect to fish.

Mr. Cockrum: Mr. Examiner, I don't think it is necessary to go into a lengthy discussion of the subject here at this time. I would merely like to submit that in the broad definition of agricultural products as contained in Section 207 of the Agricultural Marketing Act of 1946, there is included in that definition, specifically included, Mr. Torinus, the term "forest products."

[fol. 1245] Exam. Dishman: Whose definition is that; the Secretary of Agriculture's?

Mr. Cockrum: No, sir. That is the statutory definition.

Exam. Dishman: I see.

Mr. Torinus: That isn't the statute that gives you the authority to appear in any proceeding before the Interstate Commerce Commission, is it, Mr. Cockrum?

Mr. Cockrum: Under the statutes under which we are in this case, Mr. Torinus; the Agricultural Marketing Act of 1938, and also the Agricultural Marketing Act of 1946.

Mr. Torinus: I raised the question because I was curious.

The Witness: Do you notice page 296 there, Mr. Torinus?

Mr. Torinus: Yes, I did.

Mr. Cockrum: That is a part of the Agricultural Marketing Act; Section 203-J.

Mr. Torinus: That is the exempt from regulation section?

The Witness: No, sir.

Mr. Cockrum: No, sir. 296.

Mr. Torinus: I have no further questions.

Exam. Dishman: Any other cross-examination?

Mr. Golden: I have a few questions.

By Mr. Golden:

Q. Mr. Pease, as I understand it, it is your business to appear in cases of this sort?

A. That is my assignment. I do not know if it is my business.

[fol. 1246] Q. Sir.

A. I do not know if it is my business. It is my assignment.

Q. And you are constantly appearing in cases of this nature, involving rates?

A. Often, yes.

Q. Do you regularly support the party in this type of case which advocated freer routing, lower rates and through routes, and so forth?

A. Mr. Golden, as I stated in the beginning, this tremendous production of agricultural products, in the middle of which we are now,—the producers need every avenue of disposition, sale and distribution, and the most extreme flexibility in distribution and marketing that can be obtained equitably and justly.

Q. In other words, you advocate wide open relief?

A. Not wide open relief, but reasonably wide open.

Q. You have not opposed opening a new route in any case, have you?

A. No, sir.

Mr. Golden: That is all.

Mr. Rockwood: May I ask one or two more questions?

Exam. Dishman: All right.

By Mr. Rockwood:

Q. There is a big surplus, from prior years, of soft wheat here on the west coast, is there not?

A. Yes, sir.

Q. You are familiar with the fact that there are thousands of bushels of wheat stored in Liberty ships down on [fol. 1247] the Columbia River near Astoria right now?

A. Yes, sir.

Q. Is there any such surplus of hard wheat?

A. Yes, sir. We have as many ships, similar ships in the rivers in the east.

Q. Is that spring wheat which has been stored?

A. It is hard wheat. I do not know whether it is spring wheat or not.

Q. Is it wheat produced in Montana?

A. No. It is wheat produced in the middle west, east of Montana.

Q. Is it wheat of the type produced in Montana?

A. I do not know. It is wheat produced in Iowa, Nebraska, Kansas and Texas, Oklahoma and Arkansas.

Q. Is that not winter wheat country rather than spring wheat?

A. Yes, sir.

Q. Montana wheat is spring wheat, is it not?

A. I think so.

Q. Is there any surplus spring wheat stored around in Liberty ships or anywhere else that you know of?

A. I do not know, sir. There may be.

Q. So that you do not know of your own knowledge whether or not the wheat farmer in Montana, served by any railroad, has had difficulty in disposing of his crop in the last several years, do you?

[fol. 1248] A. Mr. Rockwood, no farmer has had difficulty in disposing of his wheat crop in the last several years. He has always had one final place to go.

Q. Yes, the good old United States. But, has the wheat farmer, raising spring wheat in Montana, had any difficulty in disposing of his wheat to someone who is going to make flour and sell it rather than storing the wheat; do you know?

A. I am under the impression that I have seen some substantial figures as to the Commodity Credit Corporation taking over in Montana.

Q. You do not know whether he could dispose of it or not?

A. I do not know.

Mr. Rockwood: That is all.

By Mr. Hillman:

Q. Mr. Pease, do you know how this case was first brought to the attention of the Department of Agriculture?

A. Yes, sir.

Q. How was that?

A. The Interstate Commerce Commission submits to the Secretary of Agriculture copies of all complaints filed with

the Commission in any way affecting agriculture or agricultural products. In due course of events, we receive a copy of the complaint from the Commission.

Q. Did the Department of Agriculture decide on the position that they take in this proceeding now before or after the statistics which are contained in your exhibits were prepared and thoroughly analyzed?

[fol. 1249] A. Before.

Q. Before?

A. Yes, sir.

Q. I assume that the Department of Agriculture, as far as its own transportation policy is concerned, is concerned about the maintenance of an adequate national transportation system in accordance with the national transportation policy; is that correct?

A. Yes, sir.

Q. What consideration was given by the Department of Agriculture before adopting its position finally in this proceeding to the possible loss of revenues of any Western Trunk Line carrier if the proposal were granted? Was any consideration given to that, Mr. Pease?

A. Some consideration was given. We also gave consideration to the fact that if this complaint succeeds, the originating carriers will not be damaged.

Mr. Torinus: Wait a minute now. I would like to have you define originating carriers.

The Witness: Shall I say the originating—the original defendants, the S. P. and S., the Oregon Trunk and the Oregon Electric. That if there is any diversion of traffic to the Milwaukee by the success of this complaint it will be only on what the Milwaukee can, through its solicita-

[fol. 1250] tion, obtain, and the effect on other connections of the S. P. and S. we did not feel would be too serious, especially in the over-all picture that the agriculturist had more ways to sell his products and get rid of them.

By Mr. Hillman:

Q. To what extent did you analyze any possible revenue loss to the Western Trunk Line carriers, other than Min-

nesota Transfer, to points east and south of Minnesota Transfer?

A. Well, I do not know that we gave that very much thought.

Mr. Hillman: That is all.

Exam. Dishman: Is there anything on redirect examination?

Mr. Cockrum: Yes, sir.

Redirect examination.

By Mr. Cockrum:

Q. Mr. Pease, do you know whether or not there is a large movement of grain and wheat from points in the Dakotas and Montana westbound for export?

A. At the present time, I am not too sure about the large amount for export, Mr. Cockrum. There have been large amounts during some of the war years. At the present time, I believe the export situation itself is a little slow.

Mr. Cockrum: That is all on redirect examination.

Exam. Dishman: Do you desire to offer the exhibits in evidence?

Mr. Rockwood: Just a minute.

Mr. Maguire: I have a question on redirect.

[fol. 1251] OFFERS IN EVIDENCE

Mr. Cockrum: I would like to offer Exhibits 19, 20, 21 and 22 in evidence, Mr. Examiner.

Mr. Rockwood: I have no objection.

Mr. Torinus: No objection.

Exam. Dishman: They are received in evidence.

(Interveners' Exhibits Nos. 19, 20, 21 and 22, Witness Pease, were received in evidence.)

By Mr. Maguire:

Q. With regard to the questions that were addressed to you by Mr. Hillman, did you, in assessing the repercussions of the relief, if granted in this case, upon the lines

operating east and south out of Minnesota Transfer, Paragraph 11 of the original complaint, and 12 of the amended complaint—I will hand you a copy, if you don't have one handy. As a matter of fact, Paragraph 11 is identical in wording with Paragraph 12. That is in the original complaint, Paragraph 11.

A. May I have the question read?

Mr. Rockwood: And may I have the question read, and have the witness withhold answering for just a minute until I check the paragraph that you are referring to?

Mr. Maguire: Surely. Before an answer is given, let us give Mr. Rockwood a chance to look at it.

Mr. Hillman: What paragraph of the amended complaint?

Mr. Maguire: Paragraph 12 of the amended complaint and Paragraph 11 of the original complaint, which are identical.

Exam. Dishman: Do you desire the question read?

[fol. 1252] Mr. Rockwood: Yes, I am not quite sure of the import of it, Mr. Examiner.

Exam. Dishman: All right.

(Question read.)

Mr. Hillman: I want to object to the question, Mr. Examiner, on the ground that Mr. Maguire has repeatedly objected to other questions during the examination, and the witness has already stated that he gave no consideration and did not analyze any possible loss of revenue to the Western Trunk Line carriers out of Minnesota Transfer, and Mr. Maguire's question presumes just the opposite answer to the answer the witness has already given, that some consideration was given.

Mr. Maguire: I will say this, if you want to be hypertechnical about this, that if he found they probably didn't have any loss, then he did not analyze any loss.

Exam. Dishman: The witness knows what he did in that regard. He is here.

Mr. Hillman: He has already stated it.

Exam. Dishman: You don't desire to change your previous statement, do you?

The Witness: No, sir.

Mr. Maguire: That is all I have.
Mr. Torinus: I have a question.

Recross-examination.

By Mr. Torinus:

Q. That presupposes that the mere fact, from a tariff [fol. 1253] standpoint, the Minnesota Transfer gateway might be open. That presupposes that under those circumstances, any traffic moving east from a point west of the Minnesota Transfer which had previously, or which might now be moved Great Northern-Northern Pacific, and is legally interchanged with the Northwestern Railway, if it should, as a result of this complaint, move Milwaukee, will be transferred by the Milwaukee to the North Western even though the Milwaukee may have a competitive route with the North Western beyond Minnesota Transfer, does it not?

A. If I understand what you are getting at, Mr. Torinus, if the Northwestern is good enough to take it away from the Milwaukee at Minnesota Transfer, yes.

Q. In other words, you just figured out what the actualities of the situation would be from the tariffs, and from what the Milwaukee blandly put in Paragraphs 10 and 11 of its original and amended complaints.

Mr. Maguire: I object to the word "blandly." I think it is unnecessary.

Exam. Dishman: Yes, I think you can leave that out.

Mr. Torinus: Probably. They could see no damage at Minnesota Transfer from—no difference at Minnesota Transfer from the existing situation except there would be one more inbound route from the west and to the west. I have nothing further.

Mr. Hillman: I want to be sure that I understand your [fol. 1254] answer to Mr. Maguire. Did I understand you to say that you read Paragraph 12 of the complaint, and I assume that if you read it and read it carefully, you concluded on that basis that there was no need to analyze what the revenue loss would be to the Western Trunk Line Carriers. Was it only after reading Paragraph 12 that you came to that conclusion?

A. It was after reading Paragraph 11 of the original complaint.

Q. And Paragraph 12 of the amended complaint. I take it by your answer that you are saying that if you had not read Paragraph 12 as contained in the amended complaint, or Paragraph 11 in the original complaint, that in the normal course of events you would have made a fairly careful analysis of what the possible loss of revenues might have been to the Western Trunk Line carriers?

A. If we thought they were going to close the Minnesota Transfer Gateway on business it brought in there, we would have taken probably a little different view of the picture.

Q. Your position was that there was no need to analyze any possible revenue loss to the Western Trunk Line carriers east and south of the Minnesota Transfer, relying entirely on the assertion that the Milwaukee has made in Paragraph 12 of the amended complaint that it intends to keep the routes east and south of the Transfer free and open to all other carriers?

A. We had no reason to question their honesty.

Mr. Maguire: I think it only fair to add, for your information, that Mr. Draver, traffic vice president of the [fol. 1255] Milwaukee Road at the Portland hearing stated that the Milwaukee was willing that this be made a condition to any relief that is granted by any order of the Commission, so there is no question of their continued good will.

Mr. Rockwood: I think that it should also be pointed out that when we attempted to cross-examine Mr. Draver on those statements, particularly in connection with statements he made in a published pamphlet, which indicated the advantage which would accrue to shippers if there were a route through Minnesota Transfer on through the Twin Cities, not involving interchange, the shippers would derive some advantage, I was not allowed to cross-examine on that subject.

Mr. Maguire: It must have been it wasn't admissible then.

Mr. Rockwood: So the Examiner ruled.

Exam. Dishman: Does that conclude the cross-examination?

Mr. Hillman: I have one more observation I would like to make, or question to ask.

By Mr. Hillman:

Q. Mr. Pease, I do not know whether you were present this morning or not when Mr. Flynn testified, but I was questioning Mr. Flynn on what he believed the routing practice might be through the Minnesota Transfer, if the Milwaukee had the long haul coming from the west to Minneapolis, and then also had as final destination a point on which the Milwaukee was competitive with other Western Trunk Line carriers, and I am sure the record will bear me out, that Mr. Flynn said, rather heatedly, what [fol. 1256] would I consider a fair—.

Mr. Maguire: Just a minute.

Mr. Hillman: Let me finish. —what would I consider a fair haul; the car to be transferred from the Milwaukee to another Trunk Line carrier for the shorter haul from Minneapolis to final destination.

Exam. Dishman: Do you have a question of the witness?

Mr. Hillman: Yes, I do, your Honor.

Exam. Dishman: What is it.

Mr. Hillman: The question is this: That if that were to be the situation, would you then consider it desirable to analyze the possible loss of revenue to the Western Trunk Line carriers from the standpoint of the Department of Agriculture?

The Witness: I fail to see any particular connection here. If the Milwaukee hauled a car into Milwaukee, destined for points east of Milwaukee, which was on two railroads, to a consumer or receiver at a point on two railroads, the Milwaukee and the North Western, and the receiver is on the Milwaukee, it would be natural for the car to stay on the Milwaukee. And if the receiver was on the North Western, it would be natural for the car to stay on the North Western—or, rather, it would be natural for the car to go to the North Western at Minnesota Transfer.

By Mr. Hillman:

Q. You are giving that answer based on your experience as a traffic man in the Department of Agriculture, [fol. 1257] and your other experience?

A. Let me say this: I have never yet routed a car of freight since I have been with the Department of Agriculture, but prior to that I have routed thousands of them, and it has always been my observation that the plant location of the ultimate consumer or ultimate customer had quite a governing influence on the routing.

By Mr. Golden:

Q. Let us assume that the plant is not located on the Milwaukee Road, or on either road, but on a common connection with both, then what would your assumption be?

A. You say not a Minnesota Transfer line?

Q. No. Let us assume it is on the Pennsylvania.

A. You mean on business east of the Minnesota Transfer? Well, I think it is a matter of solicitation.

Q. You say that you took into consideration the National transportation policy and possible effect on other lines, if the Milwaukee should win this case. I assume that includes the Northern Pacific and the Great Northern?

A. Yes, sir.

Q. What would you consider the potential traffic in this case to those lines which would be susceptible of solicitation by the Milwaukee?

A. I do not know. As a matter of fact, I would have to make a guess, and I don't want to make a guess.

Q. Did you take something into consideration when you [fol. 1258] were making up your mind on this?

A. We thought the Milwaukee might take a few hundred or a few thousand cars away from the Northern Pacific and Great Northern, but on the other hand, the Milwaukee may originate a few hundred or a few thousand cars in its territory which would go to the S. P. and S., which might be new business for the S. P. and S.

By Mr. Rockwood:

Q. You mean to take it away from the Union Pacific and transfer it to the Milwaukee?

A. It might be newly developed business that they had never handled.

By Mr. Golden:

Q. You mean new traffic that never moved before?

A. I don't know.

Q. What traffic would it be?

A. It might be atomic energy motors. It might be new war materials; it might be new airplanes.

Q. That is what you based your conclusions on to take sides in this case?

A. Yes, sir.

Mr. Boe: May I ask a question or so.

Exam. Dishman: Yes.

By Mr. Boe:

Q. I represent still a different railroad, and I am interested in your answer concerning Minnesota Transfer. Did you investigate the situation in the states of Iowa, Minnesota and Wisconsin with respect to traffic moving into the Minnesota Transfer to the destinations in those states?

[fol. 1259] A. You mean the number of cars?

Q. In a general way, in relation to the position of the railroads that operate out of Minnesota Transfer?

A. You are talking about business originating south of Minnesota Transfer?

Q. No. I am talking about traffic originating in the Pacific Northwest and moving in on the Great Northern and Northern Pacific.

A. All right. To where?

Q. Minnesota, Wisconsin and Iowa.

A. Well, I do not know exactly what you are getting at, sir, but do you mean we gave it some consideration?

Q. What investigation did you make, and what considera-

tion did you give? That is a very important consideration in this case.

A. We took the best that we could find as to agricultural commodities moving into those states, and probably one of the best pieces of evidence is a waybill study. We thought, and we still think there might be some increases in the future. We could see no particular harm that could be done to any particular line moving south of Minnesota Transfer.

Q. That was the extent of your investigation?

A. The situation will exist as it is today if the Milwaukee, as it says in its complaint, does not close the Minnesota Transfer Gateway.

Mr. Boe: That is all.

Exam. Dishman: Anything further?

[fol. 1260] By Mr. Maguire:

Q. Mr. Pease, at the time of the hearing in Portland, had the position of the Secretary of Agriculture been announced?

A. No, sir.

Q. And was it announced before the current hearing in which we are now engaged?

A. Yes, sir.

Q. It was announced at that time or before?

A. Before this hearing?

Q. Yes.

A. It was announced before this hearing, yes, sir.

Q. Maybe I don't make myself clear. The first announcement I heard of it was in this hearing.

Mr. Rockwood: There is a petition for intervention, or petitions?

Mr. Maguire: Yes. I beg your pardon. That is right.

By Mr. Maguire:

Q. And now so far as the competitive position of the other lines other than the Milwaukee, hauling east and south of Minnesota Transfer, do you have in mind that if they are smart enough to take the business away from the Mil-

waukee now, they can continue to do it after the routes are established?

A. I don't think we gave any thought to the smartness of it. It was the fact they had been on this job all these years, and their routings from these territories probably have first [fol. 1261] consideration.

Mr. Maguire: That is all.

Mr. Rockwood: May I ask a question suggested by Mr. Maguire's question?

Exam. Dishman: Yes.

Recross examination.

By Mr. Rockwood:

Q. Suppose the Milwaukee wins this case, one hundred per cent—God forbid—and gets these routes from Spokane to Minnesota Transfer and publishes tariffs which permit all other Western Trunk Line carriers east of Minnesota Transfer to participate in the business beyond that point. Now, suppose the Milwaukee gets its hands on a carload of lumber originating at a point on the S. P. and S., billed Milwaukee, don't you think the Milwaukee is in a little better position to keep its hands on that car than the North Western will be to take that car away from the Milwaukee, who already has it? Don't you think the Milwaukee is in a little better position?

A. Certainly.

Q. Don't you think the Milwaukee is going to grab its hands on that and try to keep its hands on any cars it gets presently all the way through to destination?

A. Yes, but they have to get the car in the first instance.

Mr. Maguire: Are you through? Pardon me.

Mr. Rockwood: I am not quite sure. I think that is all.

Mr. Maguire: I have another question.

[fol. 1262] Redirect examination.

By Mr. Maguire:

Q. Have you any doubts that a car that originates on the S. P. and S. or one of its subsidiaries, and moves Great

Northern or Northern Pacific to Spokane, thence to the Transfer, if the Northern Pacific and its affiliates once get their hands on the car that it can possibly move Burlington south of the Transfer, it will do it?

A. I imagine so.

Q. Is it your observation in the routing of traffic that the originating carrier has something of the edge in the route all the way through?

A. Yes.

Q. Would the intermediate carrier, such as the Milwaukee would be in this case, be in as favorable a position to obtain the through routing to final destination as if it were the originating carrier?

A. I wouldn't think so.

Mr. Maguire: That is all.

Mr. Boe: Let me ask one more question.

Exam. Dishman: All right.

Recross examination.

By Mr. Boe:

Q. This is prompted by what Mr. Maguire asked: Are you familiar with the fact that the Milwaukee is competitive with some other railroads in the states of Iowa, Minnesota and Wisconsin?

[fol. 1263] A. Yes, sir.

Q. Are you familiar with the fact that the Milwaukee is competitive with some lines which are not affiliated in any way with the Great Northern and the Northern Pacific railroads in those states? I think his question was true as far as the Burlington is concerned. I represent a different company.

A. I don't know that I am supposed to know too much about these affiliations, so if you will just explain it a little.

Q. The railroad I represent is in no way affiliated with the Northern Pacific or the Great Northern?

A. May I inquire what railroad you represent?

Q. The Rock Island. But we are competitive in some respects with the Milwaukee Railroad in the State of Iowa?

A. That is correct.

Q. What is your answer with respect to the Milwaukee hauling shipments from the Pacific Northwest, then turning it over to the Rock Island which is competitive, for a competitive point in the State of Iowa?

A. I would say as I said before that it is a matter of solicitation. If you can take it away from them, you have got the car, and if you can't, that is another matter.

Mr. Boe: That is all.

By Mr. Hillman:

Q. You agree that the originating carrier has a substantial edge over the terminating carrier. The Milwaukee would have the advantage—.

[fol. 1264] Exam. Dishman: That is already in the record.

Mr. Maguire: They are not the originating carrier anyway.

Exam. Dishman: I think a lot of this is repetition.

Mr. Hillman: I have nothing further.

Mr. Cockrum: Nothing further.

Exam. Dishman: The witness is excused. We will take a short recess.

(Recess.)

Exam. Dishman: The hearing will come to order, please. Mr. Maguire?

Mr. Maguire: Will Mr. Hettinger resume the stand, please?

W. K. Hettinger resumed his testimony as follows:

Direct examination (continued).

By Mr. Maguire:

Q. Mr. Hettinger, this morning when you were on the witness stand, as I understood your answer, that on the divisions for the portion of the haul of lumber east of Chicago, you said that if you usually used the special lumber

divisions rather than the so-called merchandise or class and column divisions, that it would result in higher divisions, and I don't believe you made it clear in whose favor the higher divisions—I mean the lower divisions—the higher divisions, that is right; in whose favor would those higher divisions run?

A. The 23 per cent that I used for lines east would be favorable to the eastern lines. In other words, their portion [fol. 1265] would be greater than what they would obtain if we had used the lumber division.

Q. And the resulting rail revenue to the Milwaukee would be greater or less?

A. It would be less.

Q. And, then, have you checked as to the basis for divisions on lumber between Chicago and the Pacific Coast, via either the Minnesota Transfer or Council Bluffs, and if so— First, have you checked on that?

A. Yes, sir, I have.

Q. And how do the bases of divisions on lumber over those routes compare with the basis that you actually used?

A. The merchandise divisions and the lumber divisions west of Chicago are exactly the same.

Q. So that if you had used any special lumber division would there have been any change in the result?

A. No, sir, there would not.

Mr. Maguire: That is all I have.

Cross examination.

By Mr. Rockwood:

Q. May I understand that: If you had used the lumber divisions, would this ultimate figure you show in Exhibit 18 of $2,532,000 been greater or less?

A. If I had the lumber divisions pertaining to lines east?

Q. Yes.

A. That figure would have been greater.

[fol. 1266] Q. It would have been greater?

A. Yes, sir.

Q. So, you have understated, by your use of class and column divisions, the additional revenue which the Mil-

waukee would get if it had been able to have the long haul between Minnesota Transfer and Spokane?

A. That is correct.

Mr. Maguire: I believe you mean between eastern territory and Spokane, don't you?

Mr. Rockwood: I meant if he would be able to retain it once he had his hands on it between Minnesota Transfer and Spokane.

That is all I have at this time.

Redirect examination.

By Mr. Maguire:

Q. Is there a substantial difference, or would a substantial difference result from the use of the actual lumber divisions east of Chicago?

A. No, sir, I don't believe there would be more than one and a half per cent at the most on those specific cars.

Mr. Maguire: That is all.

Exam Dishman: Mr. Hettinger will be available for cross-examination tomorrow morning?

Mr. Maguire: Yes, he will be available tomorrow morning if counsel wish to cross-examine him.

Exam. Dishman: The witness is excused temporarily.

(Witness excused.)

[fol. 1267] Exam. Dishman: Mr. Quasey?

Mr. Quasey: Mr. Examiner, I wish to call Mr. Beilfus. He has not been sworn.

Ernest A. Beilfus was sworn and testified as follows:

Direct examination.

By Mr. Quasey:

Q. Will you please state your name?

A. Ernest A. Beilfus.

Q. What is your business address?

A. 615 Exchange Building, Union Stock Yards, Chicago, Illinois.

Q. By whom are you employed?

A. Chicago Producers Commission Association.

Q. And, how long have you been with that organization?

A. Approximately thirty years.

Q. In what capacity?

A. As manager of the sheep and lamb division or department, rather.

Q. What experience have you had in connection with the sheep business prior to that time?

A. Oh, approximately fifteen years prior to that time.

Q. And what was the nature of that experience?

A. Oh, in various phases; anywhere from the packing house to commission firms as both buyer and seller.

Q. Now, you are testifying here on behalf of the intervening Livestock Association, Mr. Beilfus, are you not?

A. That is correct.

[fol. 1268] Q. Now, the Chicago Producers Commission Association receives various classes of livestock, does it not?

A. Yes, we handle hogs and cattle, as well as sheep and calves.

Q. Now, what volume of sheep and lambs do you handle a year at Chicago?

A. We generally run around thirty-three and a third to thirty-five per cent of the total salable receipts in the Chicago Yards.

Q. What would that amount to expressed in carloads?

A. Well, that all depends on the volume of the various years; anywhere, I would say, from thirteen hundred to eighteen hundred cars a year.

Q. From what territory do you receive sheep and lambs sent to the Chicago market?

A. From a few states east of Illinois, and practically every other state west of Illinois.

Q. Do you receive any shipments from what is commonly called the Pacific Northwest?

A. Yes, we do.

Q. And what general territory would that embrace?

A. Well, we have received them from Washington, Idaho, Oregon, Utah—practically all of the inter-mountain states.

Q. Now, in the course of your experience have you traveled in the origin territory, Mr. Beilfus?

A. Yes, I have.

Q. And off and on during the past thirty years or so?

[fol. 1269] A. Yes, sir.

Q. Are you familiar with the territory involved in this proceeding?

A. I think I am.

Q. That is, the territory in and around the S. P. and S. Railway?

A. As far as the State of Washington is concerned, I think I know it.

Q. And the territory north and east of Spokane?

A. That is correct.

Q. Would that include territory that is tributary today with the Northern Pacific and the Great Northern?

A. That is right.

Q. And the Milwaukee?

A. All three of them.

Q. Now, you are interested in the movement of livestock via every available carrier, are you not?

A. Mostly by rail, if we can get them coming that way.

Mr. Hillman: I don't get the answer.

(Answer read.)

Mr. Hillman: Thank you.

By Mr. Quasey:

Q. Now, is the Pacific Northwest one of the important producing areas for sheep and lambs?

A. It is.

Q. Now, you said you have been out in that territory, and I ask you if you are familiar with the sheep operations; that [fol. 1270] is, on the production end?

A. I am in a way.

Q. Now, are you familiar with the nature of the territory tributary to the S. P. and S. south and west of Spokane?

A. Partly, yes.

Q. Would you describe that as being, we will say, primarily a winter range or a summer range area?

A. I would say it would be mostly winter headquarters.

Q. Now, is there a significance in the terms "winter range area" and "summer range area" in sheep production?

A. There is a large difference.

Q. How does that apply, and what is its significance in sheep production in the Pacific Northwest?

A. Well, I would say your winter range is mostly a feeding operation to get ready for lambing, and your summer range is the utilization of your grasses in your various forests.

Q. And, is it true that those areas are some distance apart as a general rule?

A. As a general rule, they are.

Q. Now, what season or what part of the year is generally embraced in the winter range operation?

A. Well, that depends on the localities.

Q. We will say the S. P. and S. in this instance, because that is what is in issue here.

A. Well, I would say from November to April.

[fol. 1271] Q. And, as to the summer range, what have you to say with respect to the duration and the time of the year embraced in the summer range operation?

A. That all depends on what place you go into; anywhere, I would say, from May to November.

Q. Well, I will call your attention, Mr. Beilfus, specifically to the conditions that prevail east of Spokane on the Northern Pacific and Great Northern, as well as the Milwaukee; would your answer apply to that situation?

A. I would say that the answer would apply.

Q. There would be no particular difference there, would there?

A. Very little. It depends on what range you happen to get into. Some are earlier than others, and you have to get out of some of the others earlier.

Q. Now, is there a variation in the condition of the grass in different summer range areas from year to year?

A. The producers think so.

Q. And, is there also a difference in the earliness with which grass becomes available from year to year?

A. That is correct, there is.

Q. Are you familiar with some of the sheep operations along the S. P. and S.? I will call your attention to Virgil Davin, for instance?

A. Yes, we have handled livestock for him for a good many years.

Q. Now, does he operate a winter range on the S. P. and S.?

[fol. 1272] A. I believe he does. I don't know whether it is a winter range, but I know his winter headquarters are somewhere along in there.

Q. And do you recall some of the other operators in that area, like John Ecruer?

Mr. Rockwood: Please let the witness name the other ones.

The Witness: I know a few.

By Mr. Quasey:

Q. Tell us where they are located now, on what railroad?

A. There is John Ecruer, and there is Miquelena—you will have to spell that one yourself.

Q. Where is Mr. Ecruer?

A. I think he is around Dalton or some place in there. I am not too sure.

Mr. Torinus: On what railroad?

The Witness: I do not know whether that is his post office or not, but I am quite sure he routes via the S. P. and S.

Mr. Rockwood: Where does he load?

The Witness: I don't want to say exactly where he loads, but I think it is on the S. P. and S. I am quite sure he loads on the S. P. and S.

Mr. Rockwood: What was this other fellow's name?

The Witness: John Miquelena—M-i-q-u-e—you will have to take it from there.

Mr. Rockwood: Tell us where he is located?

The Witness: I think he is located right near Ecruer there.

[fol. 1273] By Mr. Quasey:

Q. You have been acquainted with these men for some time?

A. Yes, I have known them for a good many years.

Q. And their operations are similar to those of Mr. Virgil Davin?

A. Yes, sir, they are similar.

Q. Do you understand, Mr. Beilfus, that there is a difference in the freight rate from points on the S. P. and S. via the Northern Pacific and the Great Northern to Minneapolis and Chicago, as compared with rates from the same points—?

A. Yes, I do.

Q. (Continuing) —on the S. P. and S. via the Milwaukee to the Twin Cities and Chicago?

A. I do.

Q. Now, you are not a rate expert, of course?

A. No. I only found that out the hard way, by using the wrong bills.

Q. You heard the testimony given here by Mr. Pease, indicating a difference of some forty dollars per car on shipments moving from a point on the S. P. and S., stopped for feeding in transit on the Great Northern or the Northern Pacific on the one hand, and the Milwaukee on the other? Have you heard that testimony?

A. Yes, I heard it.

Q. Now, it was indicated that there is a difference of approximately forty dollars a car, the rate via the Milwaukee, in conjunction with the S. P. and S. being that much higher [fol. 1274] than via the Great Northern or the Northern Pacific. Now, would that difference in rate have any effect upon the selection of the place where the livestock would be ranged during the summer months?

A. It could, very much.

Q. Would that be one of the considerations?

A. Well, your rates would be a very big consideration if you were figuring on coming any distance with them.

Q. Now, livestock that goes into the summer range areas that you referred to in your testimony is so located that it has a natural trend to go to certain markets, does it not?

A. That is correct.

Q. And would you indicate what those markets are?

A. Well, as a general rule, it depends on where they are located. If they are east of Spokane, they have Billings, Fargo, South St. Paul and Chicago. Possibly a lot of them are sold right at the loading points go into the various packing plants in Iowa.

Q. Now, are you familiar with the quality of the lambs that are produced in general in the area that you testified to?

A. Yes, I am.

Q. As far as the lambs that originate along the S. P. and S. are they pretty much of the same quality, or do they vary a good deal?

A. They are of practically the same quality as those produced along other lines.

[fol. 1275] Q. And, given, we will say, the same summer range advantages, would they yield about the same results?

A. They should.

Q. When livestock is sold at a public market, what, if anything, is deducted from the selling price?

A. There is freight and various expenses.

Q. Would feed charges be included in that?

A. Feed charges in transit would be included. Also, the feed charges in the Yards, if there were any.

Q. And, of course, the customary yardage charge?

A. That is correct, and commission.

Q. Which would be the selling cost?

A. Yes.

Q. Now, so freight being one of the items customarily deducted, the producer whose freight rate was higher by a given amount would receive a relatively less return, would he not?

A. He would receive the difference between the two carloads.

Q. Now, are you generally familiar with the grazing territory adjacent to the Milwaukee east of Spokane?

A. Yes, I am.

Q. What is the logical area from which sheep may be drawn to utilize the summer range there?

A. I would say eastern Montana—or eastern Washington.

Q. And, would that include the territory adjacent to the S. P. and S.?

[fol. 1276] A. It would.

Q. Can more sheep be grazed on a given acreage than the number of cattle?

A. I would say, yes, by at least a half dozen.

Q. By that, are we to understand that where normally you would have good sustenance, we will say, for one head of cattle, you could put from five to six sheep?

A. That is correct.

Q. In the same area?

A. That is correct.

Q. Now, are all the sheep that are moved out of a winter range point to a summer range point reshipped to the same ultimate destinations?

A. What do you mean by that?

Q. I mean by that, if in the case Mr. Davin, for instance, if he should ship one thousand head to a point like St. Maries or Pocono, assuming there are no death losses, would he reship one thousand head eastward to whatever market he selected?

A. He would probably ship one thousand or more. He would ship his lamb crop; also the older ewes he didn't want to keep. The rest of them he would take back home.

Q. Now, then, there would be, then, a movement back to the winter range of the breeding stock?

Mr. Torinus: I object to his testifying about Davin's business. He is already a witness in the case, and—.

[fol. 1277] Mr. Quasey: Just a minute.

Mr. Torinus: May I complete my objection?

Mr. Quasey: All right.

Mr. Torinus: And he described his business quite fully. I don't think this witness should be permitted to speculate upon the business of other witnesses, or a witness who has already testified on the record, and I object to the question for that reason.

Mr. Quasey: I note that objection and wish to make this observation, Mr. Examiner. We are using Mr. Davin here

as typical, because that—Mr. Beilfus, in his experience, knows that the movement of sheep from the winter range territory to the summer range territory, that they generally bring back the breeding stock, and that is the point we want to bring out.

Exam. Dishman: Can you testify to that of your own knowledge?

The Witness: That is right, I can.

Exam. Dishman: What is your answer?

The Witness: Yes.

By Mr. Quasey:

Q. Now, if there should, as a result of this proceeding, be established lower joint through rates by an amount of about forty dollars or some such similar sum per car, would that have any effect upon whether or not there may be an increase in the movement of sheep and lambs by rail?

Mr. Rockwood: Now, just a minute. I object to that as entirely speculative as to whether there would be an in- [fol. 1278] crease in the movement of sheep and lambs by rail, because there is a certain movement of sheep and lambs by rail now, via certain routes. This witness has not shown yet that he knows anything about the volume of the present movement, and whether or not there will be an increase over the present movement by any change in freight rates, and it is entirely speculative, and I doubt that the witness is qualified to answer the question.

Exam. Dishman: Would you have to speculate on that to answer that question?

The Witness: I don't think so.

Mr. Rockwood: What is that?

The Witness: I don't think so.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Maguire: Could I be heard just a moment, Mr. Examiner, before Mr. Rockwood goes into this collateral question. Also, in support of Mr. Quasey's position here, this gentleman has shown himself to be a man of many

years of experience in the shipping and marketing of sheep, and I think he is entirely qualified, if anyone in the sheep business is, to express an opinion as to the impact of certain factors which have been put before him as to the increase of shipments by rail instead of other forms of transportation.

Exam. Dishman: I assume you want to test him along [fol. 1279] that line, Mr. Rockwood?

Mr. Rockwood: Yes, I do.

Exam. Dishman: Proceed.

Mr. Rockwood: You say that you are going to answer the question if allowed to do so, and, off the record, you said you based it on several years of experience in the production of sheep in eastern Washington. How many carloads of sheep were shipped from an S. P. and S. point for grazing in transit at some point east of Spokane in the year 1953?

A. I would say there would be very few.

Mr. Rockwood: As many as ten?

The Witness: There should be more.

Mr. Rockwood: How many, do you know?

The Witness: I wouldn't know exactly.

Mr. Rockwood: How many were shipped off the S. P. and S. to a point east of Spokane for summer grazing, and when I say to points east of Spokane, I am including the Great Northern, the Northern Pacific and the Milwaukee, in the year 1952?

The Witness: Well, I wouldn't want to say exactly. I am not a railroad man or a rate man. I want you to understand that. Do you serve the Union Pacific? I am going up into the Browning country?

Mr. Rockwood: We are talking about the S. P. and S. That is it.

The Witness: That is what I mean.

[fol. 1280] Mr. Rockwood: We don't get into the Browning.

Mr. Torinus: The Great Northern serves Browning.

Mr. Rockwood: Yes, the Great Northern serves Browning. You are talking about Browning, Montana?

The Witness: Yes.

Mr. Rockwood: That is Great Northern?

The Witness: I would say there isn't too many sheep along the S. P. and S.

Mr. Rockwood: And can they be taken care of at Browning?

The Witness: Off the S. P. and S.?

Mr. Rockwood: Yes.

The Witness: I imagine they could have.

Mr. Maguire: Just a minute.

Mr. Rockwood: Do you object to that question?

Mr. Maguire: I certainly do, because these questions by Mr. Rockwood at this time is an untimely cross-examination of this witness, and is upon the excuse that he wishes to test his ability, from his experience, to express an opinion as to the effect upon the trend of rail transportation of sheep if certain factors exist. Now, whether there is sufficient grazing at Browning, Montana, or not, is entirely foreign to that question, and is cross-examination rather than touching on his qualifications.

Exam. Dishman: I thought the questions would go to his qualifications?

[fol. 1281] Mr. Rockwood: It does. I want to find out what particular knowledge this witness has of the location of sheep producing points, and the location of summer grazing of sheep produced in eastern Washington.

Mr. Maguire: That information does not include, however, the expression, calling for an expression of opinion by the witness as to whether the grazing area in the Browning area would be sufficient to accommodate the sheep off the S. P. and S. That is another question.

Mr. Rockwood: Why, of course it does.

Exam. Dishman: All right.

Mr. Maguire: Which is far away from the original question.

Exam. Dishman: Are you through?

Mr. Rockwood: No. Is the grazing area around Montana, Browning, Montana, adequate to take care of sheep that come off the S. P. and S.?

The Witness: I would say so.

Mr. Quasey: Now, Mr. Examiner—

Mr. Rockwood: I am all through. Now, I repeat my objection.

Exam. Dishman: All right.

Mr. Rockwood: I repeat my objection to the question previously asked on the ground that this witness has not shown a sufficient basis for expression of an opinion as to what is going to happen in the years to come, whether or not the Milwaukee wins this case.

[fol. 1282] Exam. Dishman: We are far away from the question.

By Mr. Quasey:

Q. Mr. Beilfus, do you know what factors determine the selection of the mode of transportation by a sheep man?

A. Well, I would say whatever would get them there the fastest and the cheapest.

Q. And, is the rate, as well as the service, a consideration?

A. Absolutely.

Q. Now, would you say that if the rates via the Milwaukee off the S. P. and S. were reduced that that would discourage the movement of livestock by rail?

A. I wouldn't say that it would.

Q. And your position is here that the relief sought by the Milwaukee here—?

Mr. Torinus: Just a minute. I object to that as leading. He can state his position without you stating it for him.

Mr. Quasey: All right.

By Mr. Quasey:

Q. What, in your opinion, would be the effect of a reduced rate via the Milwaukee in sheep rates and moving to the east?

A. Well, it might have the effect of them utilizing their summer ranges east of Spokane. I want to say one thing here: It doesn't make any difference to us what railroad they come over.

Q. But if the movement of these shipments, to utilize the grass along the Milwaukee, require a movement via the

[fol. 1283] Milwaukee, that is the thing you are interested in, is it not?

A. We are interested in getting more production and opening up as many places where there is feed available as possible.

Q. And to the extent that that situation exists on the Milwaukee, that is what you want?

Mr. Rockwood: I object to that as a leading question.

The Witness: That is right.

Mr. Quasey: That is all, Mr. Examiner.

Mr. Maguire: Before the cross-examination, I would like to ask a question.

Exam. Dishman: All right.

By Mr. Maguire:

Q. Now, with regard to the question asked by Mr. Rockwood a few moments ago as to whether the summer range at Browning, Montana, would accommodate the sheep raised on the S. P. and S., will you state whether, in answering yes to that, you meant that if the summer range at Browning were devoted entirely to the sheep grazed on the S. P. and S. it would be sufficient for them, or whether the S. P. and S. sheep could also go in with the sheep from other sources; which did you mean?

A. Well, they could go over there if they so desired.

Mr. Maguire: That is all. Thank you.

Cross examination.

By Mr. Rockwood:

Q. If a sheep raiser on the S. P. and S. can find adequate summer range along the Great Northern and can move to [fol. 1284] South St. Paul—let us take it to Chicago—for $347.34 per car, as Mr. Pease developed in his Exhibit 22, if the Milwaukee got the rates they are asking, he could then ship via the Milwaukee and summer range somewhere along the Milwaukee and get it into Milwaukee at the same price of $347.34; that is correct, isn't it?

A. Yes.

Q. And, so far as the sheep raiser is concerned, it doesn't make any difference whether they move Great Northern or Milwaukee?

A. As far as the sheep raiser is concerned, it doesn't make any difference which railroad it goes over as long as he has a good range; that is his idea.

Q. As now located— Well, as long as he has an adequate range?

A. That is what he is after, yes, sir.

Q. Mr. Beilfus, Mr. Davin testified here in an earlier hearing, and said he would, or did ship from an S. P. S. point. Where is Mr. Davin's summer range, do you know?

A. He is over in the St. Joe Forest. He has summered at Browning at times.

Q. How many years has he summered at St. Joe?

A. Oh, outside of one or two years, I would say practically as long as I have known him.

Q. I may be mistaken, but do you recall Mr. Davin's testimony at the last hearing was that that was the first year he had summered along the Milwaukee? I may be mistaken in that.

[fol. 1285] A. No, he has been there before that. He was over there and then quit, and went up on the Great Northern and evidently came back there.

Q. Oh, yes. So, he has gone back and forth between the Great Northern and the Milwaukee?

A. That is correct.

Q. How many cars would Mr. Davin ship from an S. P. and S. point?

A. Oh, he varies. He has shipped anywhere from ten to twenty cars in a year.

Q. How many did he ship in 1953, do you know?

A. I don't know. I didn't handle his lambs in 1953.

Q. As to Mr. Escouer, you think he loads on the S. P. and S., but you do not know whether he does or not; is that correct?

A. I am quite sure that he loads on the S. P. and S.

Q. Is the Dalton station on the S. P. and S.?

A. I don't know. I don't know whether that is his post-office, or what it is.

Q. Is there a postoffice at Dalton in the State of Washington that you know of?

A. I don't know. I am quite sure that is where he lives.

Q. There is a station—I have a map here, which includes the State of Idaho, and it shows a station of Dalton, not on any railroad, between Couer d'Alene and Hayden Lake. Is that where he is?

A. That might be his summer post office. You see, a lot [fol. 1286] of these fellows have three different addresses. They have a summer, a winter and a fall address.

Q. And if he summered up there, it is natural to suppose that he grazes along the Northern Pacific, which is the nearest of the transcontinental railroads; is that correct?

A. Well, I wouldn't know.

Q. You do not know where he winter ranges?

A. I think it is down around McCall County.

Q. Where is McCall County?

A. It is in Washington.

Q. I know, but what railroad serves it?

A. Between the S. P. and S. and the Milwaukee.

Q. You think that, but are you sure of that?

A. I wouldn't be sure.

Q. How many sheep did Mr. Escouer ship in 1953?

A. He has varied in years anywhere from five to twenty cars in a year's time.

Q. Now, this other gentleman we talked about, Mr. Mi[illegible]ena—strike that. From the Railway Guide I find that McCall, Washington, is served by the Union Pacific railroad. Will you so stipulate, Mr. Maguire?

A. He might live in McCall and his range might be some place else.

Q. He might, but you don't know?

A. I wouldn't swear as to any of these fellows. You do [fol. 1287] not know whether they are haywire outfits or not; here today and gone tomorrow.

Q. I am talking about these individuals who may or may not be shippers on the S. P. and S.; that may have service via the Milwaukee right from their winter ranges at the present time. They may be located on the Union Pacific, as far as their winter range is concerned, and that is the extent of your knowledge?

A. As far as I know, but I think they are S. P. and S. shipments.

Q. You think that, but what evidence have you as to the fact he ships over the S. P. and S.?

A. May I look at your map. It looks like I had the towns wrong. Escouer is at Paxton.

Q. What?

A. Escouer is at Paxton.

Q. He is at Paxton?

A. Yes.

Q. That is where his summer range is?

A. That is his winter range.

Q. Where is Paxton located?

A. That is on the Milwaukee line.

Q. All right.

A. His postoffice is Lamont.

Q. Is what?

A. Lamont.

Q. Where is Lamont?

A. That is on the S. P. and S.

[fol. 1288] Q. But his winter range is at Paxton?

A. Yes.

Q. He ships out over the Milwaukee?

Mr. Maguire: He didn't say that.

Mr. Rockwood: I am asking him that.

The Witness: His winter range is at McCall.

By Mr. Rockwood:

Q. He ships out of McCall, which is on the Union Pacific?

A. I think that is on the S. P. and S., isn't it? I think it is on both.

Q. From what memorandum are you reading, which was handed to you by counsel?

A. Mr. Quasey.

Q. I know he handed you a memorandum to give you some information.

A. Yes.

Q. May I see the memorandum?

Mr. Quasey: Sure, let him see it, if he wants to look at it.

By Mr. Rockwood:

Q. The testimony which you have just given about Mr. Escouer's operations is taken from a letter, of which you had a photostat in your hand, dated October 23, 1954, addressed by Paul Wilson to Mr. Maguire, and stamped as received on November 2, 1954. Who was that received by on November 2, 1954, do you know?

A. Mr. Quasey.

Q. All right, and the information then which you get is [fol. 1289] based— Who is Mr. Paul Wilson, do you know?

Mr. Maguire: I can answer that.

Mr. Rockwood: I am asking the witness.

By Mr. Rockwood:

Q. Do you know who Paul Wilson is?

A. I think he is in Milwaukee.

Q. You think he is?

A. Yes.

Q. He got some information together, and he sent it on to Mr. Maguire, and Mr. Maguire handed the letter to Mr. Quasey, and then Mr. Quasey handed the letter to you, and you are testifying now as to Mr. Escouer's operations based on information from that source; is that correct?

A. I think it is, because I think Mr. Escouer has moved about eight times in the last several years.

Q. And the last place he landed comes from hearsay from Mr. Wilson to Mr. Maguire to Mr. Quasey to the witness.

A. That is the way a lot of our letters have to go to catch up with these fellows.

Q. That is the basis of your information as to Escouer's operations?

A. That is correct.

Mr. Quasey: Mr. Examiner, I would like to say this, that as far as the information contained in the memorandum referred to by Mr. Rockwood is concerned, that information was presented to Mr. Beilfus, and what his recollection is as to the correctness of the statements made [fol. 1290] therein is corroborated by his own experience,

and he is not relying upon the representations made in that statement alone.

Mr. Rockwood: The only difficulty of that, Mr. Quasey, is the witness just said to the contrary.

Mr. Quasey: Mr. Examiner, I would like to clear that point up. Did you understand Mr. Rockwood's question?

Mr. Rockwood: Just a minute.

Mr. Quasey: What he stated there, is that your understanding?

Mr. Rockwood: We will let the witness' testimony stand as to what it is. There is no confusion on the record at all, and we will not have the testimony now patched up or changed by leading questions if I can prevent it.

Mr. Quasey: It isn't a leading question, but bringing the true facts into the picture.

Exam. Dishman: The witness answered the questions of Mr. Rockwood. Do you want them read back?

The Witness: What was the question?

Exam. Dishman: Well, it was some time ago.

Mr. Quasey: Can we have that question read back?

Mr. Rockwood: The witness has confirmed the fact that that is the basis of his information.

Mr. Quasey: I submit that has to do with Mr. Escouer's present location, but as to his operations, that is based on Mr. Beilfus' experience years back.

[fol. 1291] Exam. Dishman: Did you mean that to be an all-inclusive answer, or do you know of your own knowledge about his various locations?

A. Well, I would say an all-inclusive answer.

Mr. Rockwood: You would say what?

The Witness: I would say it was an all-inclusive answer.

Exam. Dishman: It was an all-inclusive answer?

The Witness: Yes.

Mr. Maguire: I wonder if I could ask the witness what he means by an all-inclusive answer in that connection? I doubt that he understands the question.

Mr. Rockwood: You may do that on redirect.

Mr. Maguire: Just a moment. You are raising that question and the Examiner has allowed some latitude here. If you want to disguise it, or cover it up, I want to bring it out.

Exam. Dishman: I asked the question if it was an all-inclusive answer. What did you think I meant by the term "all-inclusive"?

The Witness: It answered them all.

Exam. Dishman: Well, would it mean that that was the only basis of the information you had as to the location of this man's operations; that you got all that information from that letter?

The Witness: His recent operations, yes, from that letter. Before that, I think he lived up at Sunnyside, Wash-[fol. 1292] ington, not over two or three years ago. That is on the Northern Pacific. You won't have to look. He didn't ship. He trailed.

Exam. Dishman: Is it your testimony then, Mr. Beilfus, that this person moves around so much that you can't tell just where he is at any certain time, or where his shipping points are?

The Witness: That is correct.

Exam. Dishman: You just don't know, is that right?

The Witness: That is right, which is true of a lot of sheep men. They will live one place, and have a half a dozen other places where they get their mail and operate out of.

Exam. Dishman: So you couldn't state of your own knowledge just where the shipping points are of this individual you are talking about?

The Witness: That is correct.

Exam. Dishman: All right.

By Mr. Rockwood:

Q. Can you tell us what the shipping points are of any of these nomadic sheep rangers?

A. From whereabouts?

Q. You say these sheep rangers have a habit of moving about from place to place?

A. There is a certain type that do. Lots of them do, and lots of them are very stationary.

Q. Of those three you told us about,—Mr. Davin, Mr. Escouer and Mr. Miquelena, isn't Mr. Miquelena— Well, where is he located?

[fol. 1293] A. At Lamont.

Exam. Dishman: You do not know whether that is a shipping point or not?

The Witness: I wouldn't know.

Exam. Dishman: All right.

By Mr. Rockwood:

Q. Where does he load, do you know?

A. That, I wouldn't know. That might be his home range. He might trail one hundred miles from there, and load some other place.

Q. That is very interesting. Is it possible to trail sheep across country from the winter range to the place of loading?

A. It has been done.

Q. Do you know where the station of Washtucna is located on the S. P. and S.?

A. I have an idea.

Q. How far is that from a loading point on the Milwaukee?

A. Going in which direction.

Q. If you move north from Washtucna, how far is it by airline to a loading point on the Milwaukee?

A. Well, if I can look at your map I can tell you. Understand, I am not a railroad man.

Q. I was just wondering. May I show you another map, and you may be able to answer the question. I will not offer it in evidence, but I am perfectly willing for it to be put in evidence, if it is so desired. This is a Northern [fol. 1294] Pacific map in the State of Washington. Where is Washtucna?

A. Here it is, right here (indicating on map.)

Q. There is Lyon on the Milwaukee. That is about twelve or fifteen miles across country there.

A. Yes.

Q. Assuming that the map you have had available for checking is reasonably accurate, how far is Washtucna from a loading point on the Milwaukee?

A. It looks like it is about fifteen to twenty miles.

Q. Would it be practical to trail a band of sheep from winter range near Washtucna to load on the Milwaukee?

A. It has been done.

Mr. Quasey: Just a minute, Mr. Examiner; I think there should be consideration given to the physical characteristics of the territory. There may be a mountain range or divide there.

Mr. Rockwood: And I am asking him if it is practical to trail across country.

The Witness: It has been done.

By Mr. Rockwood:

Q. So if a man at Washtucna wanted to summer range on the Milwaukee, and get into Chicago on this $347 charge that Mr. Pease talked about, he could trail across country fifteen miles, couldn't he, and ship by rail?

A. He could, if he so desired, yes.

Q. What would the cost be to trail one thousand sheep fifteen miles across country?

[fol. 1295] A. I wouldn't know.

Q. How many sheep in a car?

A. Single or double deck?

Q. Well, either single or double deck. Let us take both of them.

A. Anywhere from 140 to 340.

Q. Depending upon whether it was a single deck or a double deck car?

A. Depending on whether it was a single deck or double deck car and the weight of the lambs.

Q. You do not know how much it would cost to trail a band of sheep fifteen miles across country?

A. No, sir.

Q. How large a band of sheep will move from winter range to market?

A. Generally one thousand to twelve hundred, ewes and lambs.

Q. Ewes and lambs?

A. Yes. That generally constitutes a band.

Q. Including the lambs which have been dropped?

A. Yes.

Q. All right. There will be in the neighborhood of two thousand head of ewes and lambs?

A. That is right.

Q. And about 140 to 340 load in a car?

A. They couldn't load that many ewes and lambs in a car.

Q. What is that?

[fol. 1296] A. They couldn't load that many ewes and lambs in a car.

Q. How many ewes and lambs can you load in a car?

A. You wouldn't load over 140, I would say.

Q. In a double deck car?

A. In a double deck car.

Q. So that two thousand ewes and lambs would be in the neighborhood of fifteen cars?

A. That is right.

Q. Twelve to fifteen cars?

A. That is right.

Q. And if the benefit that he gets from trailing across country is forty dollars a car, then for six hundred dollars, he could trail—he would save six hundred dollars in freight rates by trailing some fifteen cars of sheep across country, wouldn't he?

A. He wouldn't be using fifteen cars coming east.

Q. He would load—?

A. (Interposing) When his lambs are ready, when he gets ready to load in the fall, he would load around 230 in a double deck car, coming east.

Q. Of lambs?

A. Of lambs, yes, sir.

Q. But I am talking about moving from the winter range to the summer range?

A. But he wouldn't save six hundred dollars, because they wouldn't be coming the whole distance.

[fol. 1297] Q. Oh, yes, I follow you. Thank you. Is Mr. Davin's range north or south of the S. P. and S. near Washtucna?

A. I wouldn't know. Now, there is a guy there that lives in Walla Walla.

Q. Is his range north or south of the S. P. and S. and Washtucna?

A. I wouldn't know.

Q. Well, you can't tell us the relative advantage or disadvantage of loading out of Washtucna to the summer range on the Milwaukee as one choice, or trailing across country to the Milwaukee and moving to the summer range on the Milwaukee? You can't tell us the advantage of that?

A. If it was my own sheep— Do you want me to answer the question?

Q. Sure.

A. I would say load them at Washtucna.

Q. But sheep men do trail fifteen miles lots of times?

A. They have trailed farther than that.

Q. As a matter of fact,—?

A. It depends on whether he is going to summer range or going to load on some railroad.

Q. How far does Davin have to trail to load his stock, do you know?

A. I wouldn't know.

Mr. Rockwood: That is all I have.

Exam. Dishman: Anything more on cross-examination?

Mr. Golden: Yes, sir.

[fol. 1298] Exam. Dishman: All right.

By Mr. Golden:

Q. I started out as a cotton farmer in Mississippi, and I don't know too much about sheep, but, as I understand from your testimony, you have winter range and summer range?

A. That is correct.

Q. Those are primarily for the purpose of grazing, I take it?

A. Your summer range is.

Q. Do sheep move around from wherever the winter range is to the summer range?

A. It depends on climatic conditions. Some men will feed more than others. Some years they don't feed too much during the year; they graze around their home territory.

Q. While they are in this winter range area, it doesn't make too much difference where they are?

A. Yes.

Q. Is that correct?

A. That is correct.

Q. Somebody has to string them around?

A. They are watched all the time.

Q. About how far do they move around per day, how many miles?

A. That depends on how much territory a man owns on how far he grazes out, or whether he just naturally feeds them. Some fellows try to do it cheap, and others feed good.

Q. If you are in a grazing area, it doesn't make much [fol. 1299] difference whether you string them from one place to another, does it?

A. You have to stay within your limits.

Q. I had thought maybe that explained why these people moved around?

A. Well, no. As far as moving around is concerned, when it comes to the summer time, when the sheep come back—Well, I don't know. I can't answer the question.

Q. In this particular area out there, if there is some grazing area between, say, Mr. Davin's range, and wherever he wants to load, he can move the sheep along, can't he?

A. He can if he pays for it, or if he owns it. I don't think there is anything free in there.

Q. If there is a main highway, can they do that?

A. He can't stay on it too long.

Q. Would you say about how far they could move in a day?

A. How far they trail?

Q. Yes.

A. Eight to twelve miles, depending on how far you want to move them.

Q. They do, as a matter of fact, trail them down roads and highways, don't they?

A. Yes, and some places, when you get in certain sections, you have what they call sheep trails; I mean, when you are going through the range.

[fol. 1300] Q. They might have that in the winter grazing area, too?

A. No, that would only be at the summer places, and they don't get off too far.

Q. You stated, I believe, that you didn't handle Mr. Davin's sheep in 1953?

A. No, sir, I didn't.

Mr. Golden: That is all.

Mr. Torinus: I have two or three questions.

Exam. Dishman: All right.

By Mr. Torinus:

Q. Is the selection of summer range dependent to some extent upon the market which the shipper can reach when he ships beyond the summer range to a consuming point, or a purchasing point or a livestock market?

A. I would say no. I would say that his selection of a summer range is where he thinks he is going to produce the heaviest lambs or the best lambs.

Q. Let me ask you this: Is Denver an important livestock market, Mr. Beilfus?

A. Very.

Q. On sheep originating on the S. P. and S. and moving S. P. and S-Milwaukee, via Spokane, in the event the Milwaukee were successful in this case, those sheep, as I understand the rate situation, would not be able to be shipped to the Denver market at the through rate?

A. No, sir.

[fol. 1301] Q. Whereas similar sheep which graze on the Great Northern or the Northern Pacific may be shipped either to Denver or Chicago. Would that, in your opinion, have any effect on the desirability of grazing areas on those three railroads?

A. There are very few lambs that originate on the Great Northern, Northern Pacific or Milwaukee that reach the Denver market. There have been some from up, way up on the Union Pacific. They ship a lot on the Union Pacific, or, rather, they tried to ship to Denver, to their sorrow.

Q. In other words, you do not consider the Denver market an important market as far as sheep and lambs are concerned; is that correct?

A. Not for the territory we are talking about here.

Q. You mean the eastern Washington territory?

A. Yes. It is not a natural market for them to go to.

Q. Why do you say that?

A. Well, at the time of the year they are ready to go, you are getting lambs out of Idaho and Utah and Colorado, that are closer to the Denver market, and they are better lambs.

Q. Aren't they also closer to the Chicago market?

A. Not necessarily.

Exam. Dishman: Where are those lambs marketed that you are talking about?

A. They are marketed— Some times,—well, in the past two or three years there haven't been too many lambs [fol. 1302] coming east. They have been selling them at home.

Exam. Dishman: Where is the market then out there? Where do they market them out there?

The Witness: What points?

Exam. Dishman: Well, eastern Washington; the area in through there?

The Witness: They go to St. Paul. Some of them have gone to Billings this year; some of them reach Chicago. A good many of the lambs out of the Browning country have come into Iowa to the interior packers.

Mr. Hillman: From where?

The Witness: Browning.

Mr. Hillman: Is that in Washington?

The Witness: No, that is in Montana. Those lambs over there that are fat are generally originated either in Oregon or the State of Washington?

Mr. Hillman: Thank you.

By Mr. Torinus:

Q. I take it you are not familiar with rates and routes from that area?

A. I am not a rate man.

Mr. Torinus: I have no further questions.

Mr. Quasey: I have a few questions on redirect.

Exam. Dishman: All right.

Redirect examination.

By Mr. Quasey:

Q. Mr. Beilfus, are there a number of considerations that [fol. 1303] have to be taken into account in trailing lambs, as Mr. Rockwood indicated to you?

A. Oh, yes.

Q. Would you name some of those?

A. It depends on what kind of country you have to go through, Mr. Quasey, and what your expenses are in going through there.

Q. Well, what about the rights of a man; could he just start out across country without any arrangement?

A. He has to make arrangements, I am sure.

Q. And this summer range that you speak about, does that require any arrangements beforehand?

A. Absolutely. You must get a permit before you can get in there, yes, sir.

Q. And does that generally apply to any trailing operation, too, Mr. Beilfus?

A. If you are going to do any trailing, you have to get your permit from the forester.

Q. Or if it involves private party land, that would require permission, also?

A. You would still have to get your permission, yes, sir.

Q. Now, there was a question asked you with reference to the Denver market. Was your answer based upon consideration of the inaccessibility of the Denver market from that area?

A. That is correct.

Q. Rather than the price?

[fol. 1304] A. That is correct.

Mr. Quasey: That is all.

Mr. Maguire: I have a couple of questions, Mr. Examiner.

Exam. Dishman: All right.

By Mr. Maguire:

Q. Mr. Beilfus, in connection with the procuring of your permit for grazing, is the sheep grower in competition with the cattle grower who is looking for summer grazing?

A. I wouldn't say so.

Q. But it is necessary to get your permit before you can make arrangements to ship your lambs?

A. Absolutely.

Q. And does the question of where you are going to ship your sheep for summer grazing depend upon the availability of grazing land; summer range?

A. That is correct.

Q. In any particular area?

A. That is correct.

Mr. Maguire: That is all.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. We will adjourn until 9:30 tomorrow morning.

(Whereupon, at 5:00 o'clock p. m., Thursday, November 11, 1954, an adjournment was taken to 9:30 a. m., Friday, November 12, 1954.)

[fol. 1307]

Transcript of Proceedings, November 12, 1954

Exam. Dishman: The hearing will come to order.

Mr. Maguire: Mr. Hettinger is available for cross examination and is on the witness stand.

WILLARD K. HETTINGER resumed his testimony as follows:

Recross examination.

By Mr. Rockwood:

Q. Do you have a copy of your Exhibit 18?

A. Yes.

Q. Will you borrow from your counsel a copy of the transcript of the testimony at the hearing in Portland, particularly page 53 when Kiley was testifying?

A. Yes.

Q. I think I understand these figures but I want to reconcile the revised figures shown in your Exhibit 18 with the figures which I think covered the same subjects as stated by Mr. Kiley. At page 53 in the answer beginning at the bottom of the page, he stated:

"Well, in 1952 we originated on our lines 488 cars of freight, etc."

Those are the 488 cars you have in the first block of your exhibit, are they not?

A. Yes.

Q. He gave a figure of $432,939 for total revenues; that corresponds to your figure of $432,930 in the first block?

[fol. 1308] A. Yes.

Q. And the actual share of the earnings, I believe, is almost the same. He gives a figure of $77,160, which corresponds to your figure of $77,158.88?

A. That is correct.

Q. And the final figure he gave on that page which is approximately $240,000. The figure which you now develop corresponding to that is $257,698.67, shown in the last column?

A. Yes.

Q. And turning to the next page just about the middle of the page he begins to discuss revenues from 559 cars. Those are the same cars you show in your third block on the exhibit, are they not, page 54, about the middle of the page?

A. Yes, sir.

Q. And he says these 559 cars produced total revenues of approximately $659,000; your precise figure corresponding to that is $658,622.51?

A. That is correct.

Q. And in the next line he gave a figure of $94,500; your precise figure is $94,447.55?

A. That is correct.

Q. And in the next line, Kiley's figure is $336,000; your figure is now developed, as shown in the last column of Exhibit 18 in the third block, $300,618.01?

A. That is correct.

[fol. 1309] Q. Now, he next discusses 3319 cars shipped to points on the Milwaukee Road, near the bottom of page 54 of the transcript. Those are the cars shown in the second block of your Exhibit 18?

A. Yes, sir.

Q. The same cars. The total revenues he states is approximately $2,300,000, and your figure is $2,300,325.86, precisely?

A. Yes.

Q. And he states if we would handle these cars through the Spokane Gateway, our share would have been increased by $1,337,000; your precise figure is $1,159,813.41, corresponding to that figure?

A. That is correct.

Q. At the top of the next page he gives a figure at about the fifth line, which I take it is the revenue which you would have received had you handled it all the way to or from Spokane. He gives $439,000; your figure in the next to the last column of Exhibit 18 corresponding to that, is $395,065.56?

A. Yes, sir.

Q. Then dropping down to the middle of page 55 of the transcript, he gives a figure for 2,019 cars. That corresponds to your figure of 2,018 cars in the final bracket, with the explanation you gave of the one car disparity?

A. I am sorry. On that previous question you compared the $439,000 to the $395,000, and it should have been com-

[fol. 1310] pared with the figure shown on the total terminating from the Milwaukee the figure of $438,914.37.

Q. Where is that?

A. That is in the third column under: Terminating on C. M. St. P. & Pacific.

Q. Mr. Torinus asked:

"On that traffic, Mr. Kiley, do you have the figures on the amount of revenue you actually received?"

A. Yes.

Q. The figure for the $439,000 is $438,914.37?

A. Yes, that is correct.

Q. All right; dropping down again to Mr. Kiley's reference to 2019 cars, those are the same cars as your 2018 with the explanation you gave of the difference of one car?

A. Yes.

Q. The total revenue of those cars was $1,922,000; the precise figure is $1,922,322.30 as shown in your column headed: Freight charges, next to the last line?

A. Yes.

Q. We received, he gave a figure of $240,000; the precise figure is $239,895.66, as shown in your column of C. M. St. P. & P. revenue?

A. Yes.

Q. If we had handled the traffic through the Spokane gateway our earnings would have been increased $927,000; your [fol. 1311] figure as now developed is $814,208.66?

A. That is correct.

Q. And the figure he gave for total revenue of $1,167,000 as precisely developed by you becomes $1,054,104.32?

A. Yes, sir.

Q. And as we spelled out yesterday his total of $2,812,000 near the bottom of page 55 becomes on your revision $2,532,338.75?

A. Yes, sir.

Q. These cars included in your Exhibit 18 are all cars in the haul of which the Milwaukee participated to some extent?

A. That is correct.

Q. Did you make any effort to determine as to which of these cars the Milwaukee, via other routes if it had been successful in soliciting the traffic, could have had the long haul to Spokane, or from Spokane?

A. No, sir; I didn't make any inquiries or any study of that.

Q. This statement, as you have just said, includes the cars in the haul of which the Milwaukee participated to some extent. Assume for a moment a car originating at Chicago which moved by the Northwestern to the Twin Cities, thence by one of the northern lines to Spokane, thence via the S. P. & S. System lines to destinations on the S. P. & S.

System; if the Milwaukee prevails in this case traffic such as that would be open to Milwaukee solicitation, would it not?

Mr. Maguire: Just before you answer that, if your honor [fol. 1312] please, I submit this is no proper cross-examination of this witness. This witness is a statistician and is not a traffic expert and the total effect of his testimony is to apply certain computations to figures shown in Exhibit 1.

Exam. Dishman: Introduced by another witness.

Mr. Maguire: Introduced by another witness and this witness is not speculating as to what might have happened in his direct examination had these routes been opened. This is purely a mathematical computation based upon his judgment of prevailing divisions as to what would have accrued had the Milwaukee Railroad on all traffic where it had the shorter haul, if it had handled it between the Twin Cities and Spokane but as to any other speculations, I don't believe the witness has been qualified to do it and it is not within the scope of his direct examination.

Mr. Rockwood: That was a preliminary question and my general question I was coming to I think I know the answer; no effort has been made by you, Mr. Hettinger, in the preparation of this exhibit than to do otherwise than apply mathematical processes to Exhibit 1, and, in particular, no effort was made by you to determine the possible revenue which the Milwaukee might receive if it were successful in soliciting other traffic which might be available to it if it won this case.

The Witness: That is correct, yes. All I did was apply divisions to the cars that were shown in Exhibit 1.

[fol. 1313] By Mr. Rockwood:

Q. Do you have a copy of your prepared statement there?

A. Yes.

Q. On the third page of your prepared statement, the third full paragraph begins with the words "Revenue from traffic originating or terminating on foreign lines"; do you have that located?

A. Yes.

Q. I am going to read that first sentence: "Revenue from traffic originating or terminating on foreign lines east of Minnesota Transfer and west of Chicago via various junctions from or two points on the S. P. & S. was divided 16½ percent east and 83½ percent west of the Transfer".

Can you give us an example of a movement where some line other than the Milwaukee handled it between the Twin Cities and Chicago and still the Milwaukee participated in a haul on that car?

A. Yes, sir, you have—

Mr. Maguire: Pardon me; are you directing your inquiry to the Exhibit 1?

Mr. Rockwood: Yes; give us an example of what is included in Exhibit 1 which comes within that description.

The Witness: Well, there were some shipments that moved via Des Moines from, I imagine, points on the D. M. & C. I.

By Mr. Rockwood:

Q. On the what?

A. Des Moines and Central Iowa via Des Moines, and I [fol. 1314] allowed that line 50 percent of the revenue applicable to Minnesota Transfer.

Q. Well, now it originated at a point on the D. M. & C. I.?

A. Yes.

Q. And that road hauled it to Des Moines?

A. Yes.

Q. And turned it over to the Milwaukee?

A. That is right.

Q. The Milwaukee then hauled it to Minnesota Transfer?

A. That is correct. I just cite that as an example; there were a couple other routings involved.

Q. There were altogether 15 cars of that category, as shown in the first two lines of the third block of your exhibit which is headed: Generally originating on foreign lines, 15 cars of that type?

A. Yes.

Q. Of which this is one example?

A. Yes, sir.

Q. Can you give us one or two other examples so that we will understand the category of that business?

A. Yes, sir; I believe there were a few cars that moved via Granger, Iowa. There were a couple in other junctions; I might pick them out. I don't see them right offhand but another case would have been Lyle, Minnesota, and another case—

Q. Where is Lyle, Minnesota; on what line is Lyle, Min-
[fol. 1315] nesota located?

A. Offhand, I don't recall. I don't recall what line serves that town.

Q. You don't know what line Lyle is located on and you can't tell us whether it is not on a line reached by Minnesota Transfer?

Mr. Maguire: Which is not what?

Mr. Rockwood: I say he cannot tell us Lyle is on a line which does not itself reach Minnesota Transfer or the Twin Cities.

The Witness: I imagine it is on the Chicago, Great Western.

Mr. Maguire: If you will take my word for it, and I am willing to admit I am reading the Guide properly, the Railroad Guide shows Lyle is served by the Milwaukee, Chicago, Great Western and the Illinois Central.

By Mr. Rockwood:

Q. How is a car from Lyle, Minnesota located? We have a Minnesota map which shows Lyle is located almost on the boundary between Minnesota and Iowa and some 15 miles airline, almost directly south of Austin, Minnesota. If it is located on the Great Western, does the Great Western reach the Twin Cities?

A. Yes.

Q. On a car such as that would the Great Western haul it for the Illinois Central or what other roads?

[fol. 1316] Mr. Maguire: Illinois Central; Great Western; Milwaukee.

By Mr. Rockwood:

Q. Would the Illinois Central have a haul on that car and turn it over to the Milwaukee to turn it over to the Northern lines, or what? Do you know how such a car as that would move?

A. I would imagine—

Mr. Maguire: Just a moment.

By Mr. Rockwood:

Q. You don't know?

Mr. Maguire: Mr. Examiner, again we are getting, I think, a little bit away from the scope of the examination in chief. This witness is not an operating or traffic expert.

Exam. Dishman: Yes.

Mr. Rockwood: I am trying to find out the nature of the business included in this exhibit; that is all. I am not trying to trip him on routes or rates.

Mr. Maguire: Of course, the nature of the business included in the exhibit should have been elicited from Mr. Nichols, the witness who put the exhibit in. This witness is merely applying his computations to Mr. Nichols' figures in the exhibit.

Mr. Rockwood: I take it your witness has to analyze practically each car included in Mr. Nichols' exhibit to determine whether or not certain division percentages determined by him shall or shall not apply, is that correct, Mr. Hettinger? You had to make your analysis car by car?

The Witness: Not necessarily car by car. This was an [fol. 1317] estimate and I had to group some of the cars; in fact, quite a few of the cars, just take an average division for those cars.

Mr. Rockwood: I think that is all.

By Mr. Torinus:

Q. Just on that same subject, this may have been made clear but it has escaped me and I would like to ask the witness just one or two questions which would clarify this exhibit in my own mind. This Exhibit 18 is a compilation

with respect to traffic in which the Milwaukee participated between points on the S. P. & S. System lines and points east of Spokane for the year 1953, isn't that correct?

A. That is correct, yes, sir.

Q. Does it include or does it not include any traffic originating or terminating on the S. P. & S. for the year 1952 and moving between S. P. & S. system points and points east of Spokane which was handled by the Great Northern or Northern Pacific in connection with the Burlington and not the Milwaukee?

A. It does not, no, sir.

Q. Does it or does it not include any traffic handled by either the Great Northern or Northern Pacific between those points which was participated in by them solely in so far as the haul east of Spokane is concerned or by them in connection with the North Western or the Great Western or the Rock Island, or any of the other of their connections at Minnesota Transfer aside from the Milwaukee?

A. It does not include any such cars.

[fol. 1318] Q. And this, I take it, is true regardless of whether or not as a result of this case such traffic might be open to Milwaukee solicitation, is that correct?

Mr. Maguire: That is calling for an opinion of the witness which is not covered by his direct examination and upon which I do not believe he is qualified to testify; it is an argumentative question.

Mr. Torinus: It would clarify the exhibit, in my mind, if he would answer the question.

Mr. Maguire: I will answer it for you if you want to get our position on the thing. This exhibit shows only traffic in which we participated; it does not show or contain any computations whatever on traffic which would be open to solicitation in which we did not actually participate. Does that clarify it to you?

Mr. Torinus: Yes. It does not attempt to show traffic which might potentially be lost to the Great Northern or the Northern Pacific or these Western Trunk Lines if you should be successful in this case except such traffic as you might have had some part of the haul in 1952, is that right?

Mr. Maguire: Of course, that is kind of a trick question you are asking me there on it and I will say this, Mr. Ex-

aminer, that I think I will stand on the original statement made that it does not cover any speculation whatever on any traffic for the year 1952 in which the Milwaukee didn't actu-
[fol. 1319] ally participate and the conclusions to be drawn from that are something counsel can cover in his brief.

Mr. Torinus: It doesn't cover any traffic you didn't participate in in 1952, speculative or non-speculative, does it?

Mr. Maguire: That is right. The conclusions you draw from that are argumentative and at the proper time, proper argumentative, but I don't propose to get tangled up in any argumentative questions of yours.

Mr. Torinus: I wouldn't attempt to tangle you up.

Mr. Maguire: I wish I could count on that.

Exam. Dishman: Is that all, Mr. Torinus?

Mr. Torinus: That is all.

Mr. Boe: I have a question.

Exam. Dishman: All right, Mr. Boe.

By Mr. Boe:

Q. Mr. Hettinger, you gave the initials of a railroad in connection with your testimony, D. M. & C. I.; will you give that name in full?

A. Des Moines and Central Iowa.

Q. Between what points are those terminals, if you know?

A. I am afraid I don't know.

Q. You gave an example of a movement in connection with your testimony about shipments originating on foreign lines east of Minnesota Transfer west of Chicago in Exhibit 18. Did I understand your testimony to be that the traffic that you are discussing in connection with the Des Moines
[fol. 1320] and Central Iowa was that it interchanged between the Milwaukee and the Des Moines and Central Iowa, is that correct?

A. Yes, from the material I had to work with, I took the car as originating on the D. M. & C. I. and our oncoming junction was Des Moines and our offgoing junction was Minnesota Transfer. I had no idea of exactly how much revenue the D. M. & C. I. would be entitled to, and I took 50 percent of the revenue south of Minnesota Transfer and allocated it to those lines.

Q. On westbound traffic?

A. Yes.

Q. In other words, on traffic originating on the D. M. & C. I., and then moving to Minnesota Transfer via Milwaukee Railroad, and then beyond?

A. Yes.

Q. Is this this traffic you are talking by way of illustration in Exhibit 18, in answer to questions put to you by Mr. Rockwood?

A. Yes, that would be traffic originated on the D. M. & C. I. and coming onto the Milwaukee Road at Des Moines, going off the Milwaukee Railroad at Minnesota Transfer with a destination on the S. P. & S. or Oregon Trunk or Oregon Electric.

Q. Now, Granger, Iowa, is also an example which you gave; is that a local point on the Milwaukee Railroad or not, do you know?

A. I believe it is, yes, sir; I will check to make sure. [fol. 1321] Q. Will you be specific about that?

A. Yes, sir, it is.

Q. Local in that it is served only by the Milwaukee Railroad?

A. No, there is another road there.

Q. What other railroad serves it, if you know?

A. No, sir, I am afraid I can't say, definitely.

Q. But your testimony is that it is not a local point on the Milwaukee; there is another railroad or railroads serving Granger, Iowa?

A. Yes, sir, there is.

Mr. Boe: That is all.

Exam. Dishman: Are there any other questions on cross examination?

(No response.)

Redirect examination.

By Mr. Maguire:

Q. Will you look at your Exhibit 18? Follow this questioning as to the divisions between the Milwaukee and other lines participating east of Minnesota Transfer and west

of Chicago; that is shown in the third block, is it, those 15 cars?

A. Yes, sir.

Q. And what are the total freight charges involved in those 15 cars; that is, all the way through to points on the S. P. & S. Will you add up in the second column?

A. $10,814.19.

[fol. 1322] Q. Out of $5,314,000 odd?

A. Yes.

Mr. Maguire: That is all.

Mr. Rockwood: It is very small but I wanted to understand what he was talking about.

Exam. Dishman: Does that conclude the examination?

Mr. Maguire: Yes.

Exam. Dishman: Witness excused.

(Witness excused.)

OFFER IN EVIDENCE

Mr. Maguire: At this time I offer Exhibit 18.

Mr. Rockwood: No objection.

Exam. Dishman: It will be received.

(Complainant's Exhibit 18, Witness Hettinger, was received in evidence.)

Mr. Maguire: I now call Mr. H. O. Engel. Mr. Engel was sworn at a previous hearing.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

H. O. ENGEL resumed his testimony as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is H. O. Engel?

A. Yes.

Q. Will you repeat again your official position with the [fol. 1323] Complainant railroad is what?

A. Assistant general freight agent, Seattle, Washington.

Q. You were previously sworn in this case and testified at the Portland hearing?

A. Yes, sir.

Q. Have you examined the transcript of the testimony at the Portland hearing with respect to certain cross examination of certain witnesses?

A. Yes, sir.

Q. And I will refer you to page 153 of the transcript of testimony in cross examination of Witness Holden and also to pages 240 and 241, the cross examination of Witness Hemphill and also to pages 512 and 514 of the transcript, —the cross examination of Witness Duncan, and also to the cross examination of certain witnesses who represented receivers of shipments of lumber who testified at the current hearing—

Mr. Torinus: The current hearing?

Mr. Maguire: The current hearing, yes.

By Mr. Maguire (continued):

Q. —as to whether there were rates on lumber or related articles from mills located on the Milwaukee Railroad in western Washington, to points on the Great Western and/or the Northern Pacific Railroads east of Spokane. Now, will you state what the fact is as to the applicability of such rates?

Mr. Rockwood: I think this is highly improper. The wit- [fol. 1324] nesses were cross examined and the important fact in the cross examination as I recall it, I haven't been able to check all these references that Mr. Maguire has given, of course, nor do I know what he is directing his remarks to when he says testimony of those who testified at this hearing, but the purpose of the cross examination was to test the information which the witness had, not to determine the fact necessarily but to find out what the witnesses know about it. That was generally the purpose.

Mr. Maguire: Also, Mr. Examiner, there were assumptions to which we called attention at the time by counsel in

cross examination of various witnesses as to the non-existence of thru rates. Both Mr. Rockwood and Mr. Torinus have stated as a fact to these witnesses in the guise of questioning, that there were no such rates.

What the witnesses said is one thing and it may have been their desire to test the wariness of the witness against these erroneous statements,—I don't know about that,—but I think we are entitled to bring out to supplement our direct testimony as to what the factual fact is as to the rates on lumber on the Milwaukee.

Exam. Dishman: Yes, we should have those facts in the record. The Commission should know what the facts are, so I will let the witness answer.

A. Well, the fact is that there are single factor joint rates on lumber from local points on the Milwaukee in [fol. 1325] western Washington such as Morton which was repeatedly referred to, to all destinations on both the Great Western and Northern Pacific Railways, in Montana, North Dakota, South Dakota, Minnesota and Iowa.

By Mr. Maguire:

Q. When you say from local points are there any exceptions,—from local points on the Milwaukee?

A. No, sir, not there in western Washington. It is a fairly complete coverage of rates, and when I mentioned also Minnesota and Iowa, I didn't mean that—now, these rates that I am speaking of would permit of a mill at Morton starting a car out on the Milwaukee and while it is en route on the Milwaukee diverted to a point on either the Great Northern or Northern Pacific in Montana or Minnesota, North and South Dakota.

Now, these are destinations west of the Transfer. In addition the rates do apply to points south and east of the Transfer, via Milwaukee to the Transfer, and thence connecting lines, but the point is that the mills in Washington have the open and the joint going rate basis, Coast rates, to points on these other lines as well as to points on the Milwaukee.

Similarly, there are rates from Great Northern local points to our destinations west of the Transfer and like-

wise from points on the Northern Pacific in western Washington points on our line, and also these Great Northern and Northern Pacific routes cross. They can start cars on the Great Northern and move to points on the Northern [fol. 1326] Pacific and they can start cars on the Northern Pacific and move to points on the Great Northern, so there is a marked difference in the application of rates from western Washington points as against these Oregon shipping points on the S. P. & S. in that respect.

Q. You mentioned, I think, without qualification points on the Great Northern and then you went on to say points on the Northern Pacific in western Washington. What points on the Great Northern were you referring to? I think maybe it was a slip of the tongue.

A. Points on the Great Northern as origin points.

Q. Yes, generally.

A. Points such as Blaine, Concrete, Washington.

Q. You mean points in western Washington, the same as points in connection with the Milwaukee you made reference to?

A. Yes; that is exactly what I mean.

Q. How many diversions can be accomplished under the applicable tariffs and still retain the benefit of the through rate?

A. One diversion.

Mr. Rockwood: You are talking about the same traffic originating on the Milwaukee?

Mr. Maguire: I am talking generally now because that diversions rule applies generally on all lumber traffic.

Mr. Rockwood: This is in all tariffs where diversions are permitted?

Mr. Maguire: No. I will conduct this. You can bring out [fol. 1327] what you want to.

Mr. Rockwood: I am trying to find out what you are asking.

By Mr. Maguire:

Q. What tariffs contain the rates you have just mentioned?

A. These rates on lumber are named in Agent Watson's ICC-864 and in Agent W. J. Prueder's ICC-1474 and 1545.

Q. And under those tariffs is more than one diversion of a shipment of lumber allowed under the through rate?

Mr. Torinus: Before he answers that question, I would like to know whether you mean by diversion a change in destination or some other diversion privilege. There are quite a few of them under the diversion tariff.

Mr. Maguire: Let us let the witness answer and you can clarify them later on without interrupting.

Mr. Torinus: I think your questions should be clearer, so that counsel may know, as well as the witness.

Exam. Dishman: Does the witness understand the question?

The Witness: I believe I do.

Exam. Dishman: You may answer it.

Mr. Rockwood: The question is ambiguous. Diversion has several meanings.

Exam. Dishman: Do you understand that?

The Witness: Yes.

Exam. Dishman: In answering the question, can you bring that out?

[fol. 1328] The Witness: Yes.

Exam. Dishman: Proceed.

A. The generally accepted reference to diversion means a change of destination and there is only one such change authorized on lumber at the joint through rate. I believe that is the point.

By Mr. Maguire:

Q. Yes, and from the Pacific Northwest, including shipments originating at points on the Milwaukee, Great Northern, Northern Pacific, Union Pacific, S. P. & S., and Southern Pacific, is there any tariff which allows in them one diversion; when I say that I mean change in destination, of a shipment of lumber at the through rate?

A. No, sir.

Q. Have you finished your description of these lumber rates in question?

A. I might just add that these lumber rates apply via junctions affording the origin line routing or haul to a junction generally west of the destination territory and they are not a constant junction in all cases so that the car could be quite a ways east on the Milwaukee and then be diverted to a point still farther east on the other lines.

The junction is not such that it would be based at normal junction point and thereby be deprived of the diversion because of a back haul. It is generally the diversion is possible there because it is a forward movement and forward routing application of rates.

[fol. 1329] Q. Does that same observation apply with shipments originating on lines other than the Milwaukee?

A. Oh, yes, it is the same thing; that is always so.

Q. Now, then, in cross examination of Witness Carr, with particular reference to page 444 of the transcript—

Mr. Torinus: I would like to interpose an objection. I think Mr. Engel should be permitted to state the rate situation without reference to what may or may not have taken place on cross examination of specific witnesses. As Mr. Rockwood pointed out, the cross examination of specific witnesses was directed to their testimony; they were perfectly capable of answering the questions.

If there is something that Mr. Engel has omitted from direct examination that he wishes to supplement or correct, certainly I have no objection, but I don't see why it is necessary for him to refer to the cross examination of other witnesses in his explanations.

Exam. Dishman: Well, what we want, Mr. Torinus, is we want the facts regardless of who might refer to any situation in the past. Of course, if Mr. Maguire is just making that statement to underline a statement or question he is going to ask—

Mr. Maguire: Yes, exactly, so that the Commission can consider Mr. Engel's testimony in connection with this.

Mr. Golden: The rules of evidence have been set up and the courts and the commissions and regulatory bodies have [fol. 1330] been set up for that purpose and there is no rule of evidence permitting bringing in one witness clarifying the testimony of another witness, except on his own evidence.

Mr. Maguire: What is coming in is his own evidence.

Exam. Dishman: It is perfectly all right for some reference to be made there. When the Commission studies this record we will have everything tied in. We will have his remarks, his testimony here; we will have the testimony of the other witnesses on cross examination. It just brings the thing together. That is the basis of my ruling, that it is all right for him to make reference to that. He can ask direct questions of this witness in respect to the subject matter.

Mr. Golden: Mr. Examiner, if I might just make one further remark. I had supposed that that was largely the function of counsel in argument.

Exam. Dishman: Well, is this argument, or trying to bring out facts?

Mr. Golden: Certainly.

Exam. Dishman: It is facts, wouldn't you think?

Mr. Golden: Certainly. I think Mr. Engel should be permitted to bring out any facts he wants to and supplement any testimony he wishes to supplement without making disparaging comments about the examination conducted of the other witnesses.

Mr. Maguire: I think that may be the effect of a guilty [fol. 1331] conscience because nobody has been disparaging but Mr. Torinus and Mr. Rockwood.

Mr. Golden: You were disparaging a few minutes ago about two statements of mine.

Mr. Rockwood: With what, what page are you referring to?

Mr. Maguire: Page 444 of the transcript.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Maguire:

Q. Now, will you state whether or not there are single factor rates on hogs from Sioux Falls, South Dakota to Portland, Oregon, via the Milwaukee Railroad to Marengo, thence Union Pacific and, if so, whether those rates are competitive with those by other routes?

A. There is no single factor through rate from Sioux Falls, South Dakota to Portland, Oregon by the Milwaukee, Marengo, Union Pacific on hogs or other live stock. The rule for that is TCFB Tariff 52-H, Agent W. J. Prueder's ICC 1534 and I would direct attention to the rates named in that tariff on page 153 from Sioux Falls, South Dakota to Portland, Oregon on the Union Pacific which carries with with the specific routing application, a number of routes none of which include the one I just mentioned, and further while there is a general distance scale of rates in Section 4 of the Tariff, this particular distance scale is rendered inapplicable in the presence of specific point to [fol. 1332] point rates with specific routing provided in connection with the specific rates.

It states that where there are specific rates named in Sections 1 or 2 of the Tariff, the distance rates do not apply so that we actually then have nothing via that route other than a combination of local rates which are higher than the specific rates and therefore that route is non-competitive, as a practical matter.

Q. Now, will you state what the fact is with regard to milling in transit privileges on grain at Astoria, Oregon, according to the existing tariffs?

A. Well, I have before me S. P. & S. tariff, ICC 734, which does authorize milling and other transit privileges on grain at Astoria, Oregon when received by the S. P. & S. at Spokane, Washington from the Great Northern and Northern Pacific railways, and move via the S. P. & S. to Astoria, and its destination territorial application is described as follows:

Stations Tongue Point, Oregon to Portland, Oregon, inclusive, or points beyond Portland, Oregon, where through rates are published via Portland, Oregon, Wilbridge, Oregon or Vancouver, Washington.

Now the transit arbitrary on that is the same via either route and is 7½ cents per 100 points. What that really amounts to is that while Astoria is practically out on the end of the S. P. & S., they do authorize the product moved [fol. 1333] back to Portland, Oregon and then moved south on the Oregon Electric or other destinations to which the rates apply as those moved directly through Portland.

Mr. Rockwood: May I, for clarification, ask a question, Mr. Maguire?

Mr. Maguire: Sure.

Mr. Rockwood: Does that include points on the Southern Pacific south of Portland?

The Witness: It would include points on the Southern Pacific as long as there are joint rates via Portland on the Southern Pacific.

Mr. Rockwood: Are there such joint rates?

The Witness: Yes, it is my understanding there are.

Mr. Rockwood: And they go all the way to California?

The Witness: Yes, sir.

By Mr. Maguire:

Q. Now, Mr. Engel, I would to go back to lumber just a moment here. What is the fact as shown by the tariffs, of the existence of any through rates and through routes on shipments originating on the Southern Pacific and points common with the Oregon Electric, and destined to points east of Spokane in so far as the S. P. & S. system, the Northern Pacific and the Great Northern are concerned; are there such rates and routes?

A. On lumber from points on the Southern Pacific such as Salem and Eugene and Albany to destinations east of [fol. 1334] Spokane via Portland, Great Northern?

Q. Yes.

A. Yes; there are full rates of that nature.

Q. What is the routing on that?

A. From all those points on the Southern Pacific, they have routing via the Southern Pacific, Portland, thence the Great Northern, or Northern Pacific; and also via Portland or East Portland, and then S. P. & S. lines to Spokane; that is in connection with the Great Northern and Northern Pacific and also via the S. P. & S. as far as Spokane, via the Southern Pacific, so that actually they have this dual routing privilege; in other words, they have the S. P. & S. or Oregon Electric origin routing as well as the Southern Pacific from those common points.

Q. I would like to clarify your testimony originally offered in this case with respect to rates and routing via

the S. P. & S. and in this case the Milwaukee on export and import traffic. Upon re-examination of the record I am not sure I made that entirely clear and will you briefly state what the application of those export and import rates are in what you termed on your original testimony as wide-open routing, as to what your origin and destination points are east of the Pacific Coast terminals?

A. Well, those export and import rates are named in Trans-Continental Freight Bureau tariffs, Agent W. J. Prueder's ICC Nos. 1553 and 1554. They are essentially [fol. 1335] Trans-Continental rates, and by that I mean that they apply between the Pacific Coast ports and destinations such as Denver and points east of Denver and points east of Mobridge, South Dakota on our line.

In the description that is contained in the lists of tariffs in the complaint and is referred to in my testimony, I mentioned the application of rates also as from and to Montana points.

There are some few rates specifically made applicable from and to Montana points by a specific application in the tariff and there are also others that would apply by virtue of the intermediate application of the tariff where such export rates are lower than the going domestic rate, so that the reference to Montana was a rather all-inclusive description and yet there isn't any general application of export and import rates with wide-open routing from and to the state of Montana.

I am trying to explain that the routing which is authorized by these tariffs, the so-called wide open routing and which supersedes the specific routing in the domestic tariffs, do not generally obtain on commodities such as wheat from Montana to the Pacific Coast.

Those rates are confined to the specific routing in those domestic tariffs.

Q. Then under that explanation, would wheat originating in Montana for export, even though it was to move for export, would you have wide open routing without S. P. & S.?

A. No, sir.

[fol. 1336] Q. I wonder if you would refer to pages 740 and 741 of the transcript. Parenthetically, I think this is

only a matter of individual pride with Mr. Engel because the court reporter misquoted him; on line 17 of page 740 the sentence reads:

"In other words, I felt that was a fair and a lifelike comparison." What was it that you intended to say if you didn't actually say it?

A. I meant to say what I thought I did say: "a like for like comparison".

Q. And similarly in lines 12 to 14, inclusive, on page 741, the transcript as now written says: "but I tried to make a comparison, as I say, lifelike across the Montana-Dakota State line." What should that be?

A. I tried to make a comparison, as I say of "like for like" across the Montana-Dakota State Line. It should read in that manner.

Q. Now, Mr. Engel, as to the question of through rates on sheep from Bend, Oregon to St. Paul via Union Pacific, Marengo, Milwaukee, is there any single factor through rate via that route?

A. No, sir, the situation with respect to Bend to St. Paul and Chicago is exactly the same as described on the hogs from Sioux Falls to Portland.

Mr. Torinus: Might I ask a question for clarification on that last answer?

[fol. 1337] Mr. Maguire: Yes.

Mr. Torinus: Would you say that that absence of routing applied on shipments to St. Paul or South St. Paul as well as to Chicago?

The Witness: Yes, sir.

Mr. Torinus: Thank you.

By Mr. Maguire:

Q. Now, have you made any check, Mr. Engel, on any tariff provisions which would have any application to the acceptance either by the Great Northern Railway Company or the Northern Pacific Railway Company of collect telephone calls with respect to the tracing of cars,—that is, inbound calls by shippers?

A. Yes, sir, I have.

Q. Well, will you give the tariff reference on that?

A. Item 815 on page 69 of Agent Prueder's ICC A-3859 states that.

Q. Will you read the item?

A. "Tolls on messages by telegraph, telephone, cable or radio, signed by or sent for account of shippers, consignees, or their agents or representatives relative to routing or other railroad service in connection with shipments of freight will not be assumed by the carriers excepting that when such toll is upon a collect answer to telegraph or telephone messages initiated by the carriers relating to the traffic of the shipper or consignee, same may be assumed by the carriers."

[fol. 1338] Now, this particular tariff in this particular item applies generally in this Iowa-Minnesota territory and it is my understanding of it that those charges may not be assumed, they may not reverse the charges on calls pertaining to diversions such as was mentioned here a couple days ago.

Q. It says "or tracing of cars".

Mr. Torinus: I object to that; the tariff speaks for itself.

Mr. Maguire: I think that is true. I will not press that. We can argue that. You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. Suppose a carload of lumber originates at a point on one of the lines of the S. P. & S. and is billed S. P. & S. Spokane, thence Great Northern or Northern Pacific to the Twin Cities. Suppose before that car reaches Spokane, while it is still on the rails of S. P. & S. the shipper wishes to divert, to change the destination to a destination on the Milwaukee, at a point where there is a single factor rate of the S. P. & S. and the Milwaukee, can he make that diversion and take advantage of the single factor rate to the Milwaukee destination?

A. Yes, sir.

Q. Before the car reaches Spokane?

A. Yes, sir.

Q. If the car is moving on that as routed and reaches a [fol. 1339] point on the Great Northern east of Spokane, can he, the shipper, divert them to a Milwaukee destination under these tariffs that you described this morning?

A. To a point west of the Transfer?

Q. Yes.

A. No, sir; there are no such rates.

Q. He can divert, of course, to a point east of the Transfer, to which the joint rates via the Transfer apply?

A. Yes.

Q. The situation is the same with respect to the Northern Pacific to points west of the Transfer?

A. Yes; that is correct.

Q. If the car is on the Milwaukee having originated at a point in Oregon, you say that while the car is on the Milwaukee he can divert to a point on the Great Northern or Northern Pacific more easterly, is that right?

A. Originating in Oregon?

Q. No, originating on the Milwaukee at Washington?

A. Yes, that is correct if it is going east on the Milwaukee originating, say, at Morton, then it could, say, before it reached Butte, be diverted to points east of Butte on the Great Northern or Northern Pacific. If it is caught before Terry, Montana, it can be diverted to Northern Pacific.

Q. If the car is caught on the Northern Pacific in Washington, it can be diverted to a point on the Milwaukee, for easterly?

[fol. 1340] A. Yes, it is a corresponding situation.

Q. The situation is the same for all three lines on the cars originating in Washington?

A. Yes, sir; that is correct.

Q. But in any one of those three cases having exercised one diversion privilege to change destination, there is no further diversion privilege, is that correct?

A. There wouldn't be any further diversion possible at the through rate, no, sir.

Q. At the present time can you tell us what the domestic market is for flour manufactured in Astoria?

A. I couldn't tell you, no sir.

Q. Under the present tariffs on grain originating on the Great Northern or Northern Pacific in Montana milled in transit in Astoria, it can move out of transit to all points on the S. P. & S. to points on the Great Northern and Northern Pacific north of Vancouver, Washington, and to points on the Southern Pacific, including California destinations, can it not?

A. That is my understanding, yes, sir.

Q. If the Milwaukee should get these rates with the S. P. & S., with the transit privilege at Astoria under the complaint as it is now drawn the destination territory of manufactured flour would necessarily be limited to points on the S. P. & S. System, isn't that right?

Mr. Maguire: That is calling for a legal conclusion of the [fol. 1341] witness and for an interpretation of the pleadings. I think that is a matter that is more suitable for argument.

Exam. Dishman: Well, we have an experienced witness on the stand. Are you in a position to answer that question?

The Witness: I couldn't say, of course, because that would be a matter of voluntary concurrence on the part of the Southern Pacific afterwards. It is reasonable to assume, however, that they would give us the same routing application from our origins as they have given the other lines since they would receive the same haul and the same revenue.

I believe the first move we would undertake would be to get an application of such rates. We do have the rates today to points on the Southern Pacific in connection with the Union Pacific and they would also ask that they have them from our points with the S. P. & S. It would open up additional origin territory to them.

By Mr. Rockwood:

Q. Also it would require voluntary concurrence on the part of the S. P. & S. itself, wouldn't it?

A. Yes.

Q. If you are going to get north of Seattle on the Great Northern it would require concurrence on the part of the Great Northern?

A. I never mentioned that; I was talking about the Southern Pacific.

Q. You would be more hopeful of getting concurrence of [fol. 1342] the Southern Pacific than you would of the Great Northern?

A. In answering the Examiner's question I thought the Southern Pacific itself would be anxious to have such rates.

Q. But it would require concurrence on the part of the S. P. & S.?

A. Yes.

Q. And to get north of Vancouver you would have to have voluntary concurrence on the part of the Great Northern, Northern Pacific or Union Pacific north of Vancouver, Washington, would you not?

A. Most certainly.

Q. And to the extent that there was consuming territory served only by the Northern Pacific or Great Northern, you would not be able to get in simply because the Union Pacific might wish to participate in the traffic.

A. I got lost back there but you were talking about the Great Northern and the Northern Pacific and I thought you said Union Pacific.

Q. I did. I said to the extent that the consuming destination is local to the Great Northern or Northern Pacific not served by the Union Pacific you couldn't get in there, however much the Union Pacific might wish to cooperate?

A. To the local destination on either the Great Northern or the Northern Pacific?

Q. That is right.

[fol. 1343] A. No, you would require the concurrence and you would have to get it, of course.

Q. Did the Traffic Department assist Mr. Maguire in compiling the list of additional defendants stated in the amended complaint?

A. Yes.

Q. The amended complaint will speak for itself but the fact is the Southern Pacific is not a party defendant; that is correct, is it not?

A. That is correct.

Q. You made some point of the fact that from points which are common to the S. P. & S. and the Southern Pacific

there is presently a route of the Southern Pacific to Portland, thence either Great Northern or Northern Pacific to the Twin Cities, is that correct?

A. Yes, sir.

Q. Your remarks in that connection were strictly limited to points common to the Southern Pacific and the S. P. & S. lines?

A. I didn't think they were. They deal with rates from Southern Pacific stations in Oregon generally, but they include those common points served by both lines.

Q. I don't know what the fact is. Maybe you can tell me; is there a rate from Medford, Oregon applying via Vancouver and Great Northern and Northern Pacific?

A. Via the Southern Pacific to Portland and the Great [fol. 1344] Northern, Northern Pacific. When you mention Vancouver you get beyond Portland through Vancouver.

Q. Yes.

A. Yes, I believe there is.

Mr. Rockwood: That is all I have.

By Mr. Torinus:

Q. I have several questions about those cross-over routes on lumber, Mr. Witness.

Exam. Dishman: Let us have a short recess.

(Short recess.)

Exam. Dishman: The hearing will now be resumed. Are you ready to proceed, Mr. Torinus?

Mr. Maguire: Before Mr. Torinus commences, I think it might save a little time here because there was one point I overlooked bringing out on direct, and if I could have your indulgence on that, I would appreciate it.

Exam. Dishman: All right.

Redirect examination (continued).

By Mr. Maguire:

Q. With reference to these lumber rates on shipments originating in local territory of the Milwaukee, the Great Northern, or the Northern Pacific in western Washington

and those reconsigned east of Spokane to points on either one of the other two lines, do those rates carry with them the privilege of a stop, let us say, for example, on the originating line for a partial unloading and the reconsignment of the balance at the through carload rate to a destina-
[fol. 1345] tion upon one of the other lines?

A. Yes, they would have that privilege.

Mr. Maguire: That is all.

Recross examination (continued).

By Mr. Torinus:

Q. On these cross-over routes, so called, on lumber that you have just been talking about, I would like to ask several questions. Taking lumber shipments which originate at Morton which is a point you mentioned and which I understand is local to the Milwaukee Railroad; you mentioned, I believe, in your direct testimony that that might be interchanged to the Great Northern, then Butte, and moved to a Great Northern destination east of Butte under the existing tariffs, is that right?

A. Yes.

Q. Does it apply as far east via Butte as St. Cloud, Minnesota?

A. The application would carry you as far as just west of Fargo or Castleton, along in there.

Q. You do have a restriction in the cross-over route published from Milwaukee local territory in so far as it applies via Butte to destinations on the Great Northern which would not permit you to go to Minnesota points on the Great Northern via that junction, is that correct?

A. That is correct, and may I add just one thing?

Q. Certainly.

A. Well, as I explained a while ago it is not a constant
[fol. 1346] junction but the junction moves east with the destination so that car could be rolling on east of Butte and be diverted via Aberdeen, South Dakota to points on the Great Northern east of Fargo.

Q. I understand on a shipment which went to a Great Northern point east of Fargo, Aberdeen rather than Butte would be the junction, is that correct?

A. Not in all cases but to a large part of the Great Northern territory. There are two other junctions in addition.

Q. Why do you move the junction eastward as the destination territory on the other line moves eastward?

A. The reason for that is simply that it is—

Mr. Maguire: Let him finish his answer.

A. (Continued) It is in consideration of giving the origin line its maximum haul compatible with economic transportation routes. In other words, it is confined to the more direct movement of the car and not entirely to accord the origin line its longest possible haul. There are two considerations.

By Mr. Torinus:

Q. One of the major considerations is to give the Milwaukee its maximum haul?

A. Yes.

Q. If you originated a car at Morton on the Milwaukee and desired to go to St. Cloud on the Great Northern, then as I understand your testimony, the Milwaukee would have a haul to Aberdeen, South Dakota, or could have a haul as [fol. 1347] far east as Aberdeen, South Dakota, thence Great Northern, St. Cloud. Now, before the car got to St. Cloud or before it had been checked for unloading at St. Cloud, could that be diverted to Winona, Minnesota, on the Burlington or to La Crosse, Wisconsin, on the Burlington?

A. I haven't located St. Cloud yet. I respectfully state I am not too familiar with this.

Q. Here it is.

A. Oh, yes, here it is. The answer to that question would be no, because the rate to Winona carries specific routing which would be Milwaukee through to the Transfer, thence the lines serving Winona, but I would state that there are in addition to these so-called cross-over routes joints through rates from Morton, Washington via the Milwaukee to Tacoma and the Northern Pacific to eastern points via the Transfer.

I am not sure there is Great Northern routing in there; under such application they could divert from a point on the Northern Pacific to destinations beyond. I am not sure as to the Great Northern, without looking that up.

Q. Isn't it a fact, Mr. Engel, that on those cross-over routes the tariffs do not provide for diversion beyond the Great Northern or Northern Pacific west of the Transfer to a destination east of the Transfer?

A. The fact is that there are no rates via such interior junction and in the absence of joint rates a diversion wouldn't be applicable.

[fol. 1348] Q. In other words, on a shipment originating at Morton on the Milwaukee, moving via the Milwaukee to some junction with the Great Northern, thence moving via the Great Northern to Minnesota Transfer, or a station west of Minnesota Transfer, a shipper would not have the privilege of diverting at a joint through rate east of the Transfer, isn't that correct?

A. That is correct.

Q. In that respect your lumber which originates on your line and moves via the line of a competitor in a territory west of Minnesota Transfer is restricted in so far as diversion is concerned, the same as the joint through rates that exist on lumber originating on the S. P. & S. moving via the Milwaukee between the territory east of Spokane and west of Minnesota Transfer, isn't that right?

A. The traffic moving via the Milwaukee from Spokane originating on the S. P. & S. System?

Q. Let us take a specific instance. You have indicated that—well, let us take Klickitat, Washington, for example, an S. P. & S. point, a carload of lumber—let me put it this way: First I understand there are joint through rates on lumber from that origin to a wide Milwaukee territory east of Mobridge, South Dakota, isn't that right?

A. There are rates to our local destination territory.

Q. And you can't divert beyond the Milwaukee under those joint through rates?

[fol. 1349] A. There are no joint through rates beyond; that is correct.

Q. The same situation is true with respect to lumber originating in your local territory and moving via the Great

Northern. Under the existing rates you can't divert at joint through rates to destinations beyond the Great Northern, isn't that correct?

A. Once it has gotten into this destination territory west there isn't the opportunity to divert at the joint through rate beyond but this territory here with the routes and junctions as far east as they are enables the party who wants to make his diversion to permit that car to go on to the Transfer from which he has a wide-open application.

Once it has gotten into and off of the origin line then he is foreclosed but he does have the opportunity to divert it beyond via the Transfer which he doesn't have when it comes off the Oregon Electric and is once on our line and several days elapses and he is unable then to get beyond; there is that difference.

Q. What you are saying is this: Once your lumber gets on the Great Northern it is in a pocket, in the sense that it can't be diverted at joint through rates beyond Minnesota Transfer or the Twin Cities, Minnesota, which is the Great Northern's eastern terminal, isn't that right?

A. There are no joint rates beyond.

Q. There are no joint through rates beyond?

[fol. 1350] A. That is correct.

Q. However, once S. P. & S. lumber gets on the Milwaukee it can go at least as far east as your easternmost local station which is a considerable distance east of Minnesota Transfer, isn't that right, at joint through rates?

A. Yes.

Q. Can a shipment from Morton, Washington, which is a local point on the Milwaukee, move via the Great Northern to Fargo, North Dakota?

A. From Morton to Fargo?

Q. Via any junction?

A. No, sir.

Q. In other words, you won't give the Great Northern any haul on a shipment from Morton to Fargo, North Dakota, because the Milwaukee serves Fargo with its own rails, isn't that right?

A. That is correct.

Q. And you give the Northern Pacific any haul between Morton and Fargo?

A. No, sir, except—wait just a moment. From Morton I would have to check that as far as the Tacoma routing is concerned; I do believe we have the joint rates from Morton via Tacoma to Fargo.

Q. But you don't have them in connection with the Great Northern?

A. I am not sure but I doubt it.

[fol. 1351] Q. Let us take another point, Sioux Falls, South Dakota, which is served by the Great Northern and also by the Milwaukee. Do you have joint rates from Morton to Sioux Falls, South Dakota, via the Great Northern?

A. No, and I might make it clear these so-called cross-over routes are confined to the so-called non-competitive movements. We have fourth section authority in the publication of them so that there are no rates to points that the origin line itself reaches, and that is also true in the origin of the traffic; we wouldn't have rates, for example, from a point that the Great Northern or Northern Pacific reaches, to points that are competitive as between our lines on the east end.

They do not give us rates from their common points with us in western Washington to points that they can reach. And so the whole structure of these cross-over routes is a fill-in, a complete application of rates by one route or another between all origin points and all destinations so that those shippers there in western Washington do have the access to all of the destination territory via one route or another.

Q. Without the privilege of diversion to points beyond?

A. The diversion must necessarily follow the through rate application. If there is no through rate via a particular junction then naturally it would be a combination rate.

Q. The answer is there is no diversion beyond the eastern termini of those lines we have been talking about, isn't [fol. 1352] that right? At the joint through rate?

A. That is right.

Q. And your policy of confining routing on lumber originating on the Milwaukee in so far as these cross-over routes are concerned to destinations which are non-competitive with you on long haul routes is not different from the policy of the Northern lines, isn't that right?

A. Yes, as I stated it is the same system of publications. It is accepted and commonly applied in these rates.

Mr. Torinus: I have no further questions.

Exam. Dishman: Would you explain, for the benefit of the record, just what cross-over routes are?

The Witness: I don't know; I guess maybe we coined that expression in connection with these particular rates.

Exam. Dishman: Well, as used here.

The Witness: As used here the cross-over simply gets its name from the fact that the traffic can start out on our line and can cross over to points on either the Great Northern or the Northern Pacific.

It can start on the Great Northern, cross over to the Northern Pacific and our line and it is a reciprocal arrangement which has been set up to give each line, as I say, a maximum haul and to avoid depriving either line of a haul to the common point such as Fargo that the line could handle directly.

It is a reciprocal arrangement of rates and the cross over [fol. 1353] is simply that it describes the movement from one line to another, on the haul. That is about as good as I can give it. In our general freight office we pick up expressions like that and it is pretty well understood among us.

Exam. Dishman: Is there any further cross examination?

By Mr. Torinus:

Q. Do you stop to complete loading at a competitive point under those routes?

A. No, that would be exactly the same thing because you don't have a rate from this competitive point and in the absence of the rate your combination would apply and so while you could stop you would be subjected to the higher charge.

Mr. Torinus: That is all.

By Mr. Golden:

Q. This point of Morton, Washington and the route via Tacoma; that is the single instance in the entire state of Washington on your line?

A. No, sir; that isn't true. We have rates from Morton and intermediate points on that Morton branch. We also have rates from points on our line north from Bellingham and I believe those rates also apply via the Great Northern.

And it is not as broad an application, this routing by Tacoma, as this other is into that territory, but it is broader into the territory generally east. As a matter of fact, those rates apply via Tacoma and the Northern Pacific pretty near as broad an application, I guess as broad,—make it nearly as broad as on shipments originating on the North-[fol. 1354] ern Pacific proper, and that includes competitive points as well as non-competitive destinations.

Q. Did you acquire that line from Morton from prior railroad ownership?

A. Yes, I believe that is correct.

Q. Were those rates in effect at that time?

A. Yes.

Q. Is that true of your route north of Bellingham?

A. Yes.

Mr. Golden: That is all.

By Mr. Boe:

Q. Mr. Engel, are you sufficiently acquainted in the territory between Minnesota Transfer and Chicago and east, to be able to say how many railroads generally operate between Minnesota Transfer and Chicago competitively with the Milwaukee?

A. How many?

Q. Yes.

A. To be exact, I couldn't be exact but there must be a dozen.

Q. And you know, of course, that the Milwaukee has the direct line between Minneapolis-St. Paul and Chicago?

A. Yes.

Q. You know that possibly four other lines have lines between Minneapolis-St. Paul and Chicago?

A. I can name that many, I am sure.

Q. You know that additional lines have connections be-[fol. 1355] tween Minneapolis-St. Paul and Chicago?

A. Yes.

Q. And that traffic originating in the Pacific Northwest on the S. P. & S., to be specific, may move east of Chicago to points in territory, we will say, east of Chicago to the Atlantic Seaboard and south of Chicago; you know that, don't you?

A. This is originating on the S. P. & S. and you are speaking of lumber traffic generally via Great Northern and Northern Pacific and the Minnesota Transfer and these various routes to Chicago?

Q. Yes.

A. That is correct.

Q. With respect to that type of traffic, should your petition succeed here, what would be your company's policy with respect to traffic moving competitively between Minneapolis-St. Paul and Chicago and points east? Would you attempt to haul that via Milwaukee, as far as Chicago or would you attempt to share that with other companies?

A. I can answer that only in this way, that we have rates today from our own origins such as Seattle to that entire territory via all lines operating between Minnesota Transfer and Chicago and we work with those lines and there is no reason why we should do any differently with respect to traffic which we may receive at Spokane from the S. P. & S. than we do on traffic generally originating in that territory.

[fol. 1356] Q. Do I understand from that that you wouldn't solicit traffic all the way through to Chicago and for points east?

A. I wouldn't say that. We would solicit it and so would the Western Trunk Lines operating out in our territory. I know many of them do and they are very active in their solicitation and I will say this, that when I say we work with them, we wouldn't follow them around and try to take the business away from them they have routed or that they have secured the routings on. We are fairly good neighbors out there in that respect.

Q. But you are working for the Milwaukee Railroad. I am working for a competing company, and wouldn't your company, to the extent it got general traffic as far as it could in connection with the Milwaukee, hold it as well as it could?

A. We undertake to secure the haul that will give the Milwaukee the greatest earnings and yet we respect the shipper's routing 100 percent.

Q. You respect the shipper's routing but so far as solicitation is concerned, aren't you going to urge that you now have under your new arrangement that you propose by your petition here, that you have a line of railroad from the Pacific Northwest to Chicago, a single line railroad and beyond; you are going to do that as a matter of solicitation?

A. We do it on our business from our own origins.

Q. You do it now and you will do it if this petition is granted, is that right?

[fol. 1357] A. We will certainly undertake to secure the haul if the shippers favor us with it.

Q. That would be considering the fact that the Milwaukee has a line between the Twin Cities and Chicago and on down to Terre Haute, Indiana. You would solicit this traffic all the way to Chicago or Terre Haute?

Mr. Maguire: May I interrupt? I think, Mr. Boe, that this line of questioning,—I know you haven't had a chance to examine the transcript fully but Mr. Draver, traffic director of the Milwaukee at the Portland hearings—

Mr. Torinus: Just a moment.

Mr. Maguire: Just a moment.

Mr. Torinus: I object to Mr. Maguire's misstating what is in the transcript.

Mr. Maguire: This is something which is not your affair.

The Witness: Just a minute.

Mr. Maguire: Yes; I just raise this point to tell Mr. Boe what the situation was; and it is just what he thinks it is.

Mr. Torinus: I object to your telling him what the testimony was.

Exam. Dishman: Refer him to the Draver testimony.

Mr. Boe: I object to that; I wasn't at the Washington hearing. I am here in this hearing.

Exam. Dishman: Off the record.

(Discussion off the record.)

[fol. 1358] Exam. Dishman: On the record. Repeat the question.

(Question repeated.)

A. The answer is we would solicit it.

By Mr. Hillman:

Q. You are assistant general traffic manager?

A. Just assistant general freight agent.

Q. You are experienced in traffic matters?

A. In rate matters.

Q. I think you have testified to show your experience. Don't you think that you are really hopeful, on the basis of your experience in traffic matters, that as far as all hauls which originate on the Milwaukee and pass through Minnesota Transfer to points on the Milwaukee but are competitive with other railroads are concerned, aren't you really hopeful that you have a much better chance of competing with competitive points if the traffic originates on the Milwaukee?

Mr. Maguire: I object to that question because that calls as a premise something which is not in this case. This is traffic originating on the S. P. & S.

Mr. Hillman: I will admit that this traffic originating on the S. P. & S. is what I am talking about.

A. It would be a pretty forlorn hope because this is traffic on a connecting line of ours and as an intermediate carrier we would be very happy to have the haul to the Transfer.

We think we would have a hard time getting that and we would be hopeful we would get some of this business to the [fol. 1359] Transfer. We would be quit hopeful and be happy if we could hope for that, even.

By Mr. Hillman:

Q. I wonder if I understand you. You are saying you can't be too optimistic about any results coming out of this at all, even if all the relief you are requesting is granted. Do I understand you to make that point first?

A. My answer was to the point of whether we had a good hope if we would handle the traffic all the way through,

and my answer was to the effect that that would be a pretty forlorn hope, that we are hopeful to get some of the haul to the Twin Cities, not that that would be entirely disregarded, but we are not hopeful that we will get any great percentage of any such movement.

Q. Were you present when certain of the witnesses testified yesterday as to what the most probable effect would be on the transfer of traffic at the Minnesota Transfer point from the Milwaukee to carriers which are competitive east of the Transfer point; did you hear that testimony?

A. I have been here all the time, I think.

Q. Wouldn't you say that might indicate that perhaps the statement you made this morning is a little pessimistic?

A. Well, their answer isn't mine and I know as a practical matter that much of the traffic we originate on our own line moves via other lines south of the Transfer to points that we could reach ourselves, much of it, like, if I could go fur- [fol. 1360] ther, there is a lot of traffic we originate on the Milwaukee in this territory going out to the Coast that we don't handle all the way through to the Coast. We turn it over to the Great Northern and Northern Pacific or other lines at the Missouri River.

Exam. Dishman: You mean, that is the shipper's route?

The Witness: Yes. This is not a one-way street. The routing is open. The shipper has the say as to how this traffic moves and while we can hope it doesn't always carry through like that.

By Mr. Hillman:

Q. Are you really stating you don't think you are going to get any competitive advantage as far as points east of the Minnesota Transfer are concerned, because of the fact it stays on your line all the way through to destination, it will not be necessary for the shipper to lose any time at the Minnesota Transfer changing from your line to another line?

A. I can say this that from my experience, shippers have no hesitancy in routing traffic that we originate out on the Coast via Minnesota Transfer and other lines, that the difference in the time, the time saved by our line or any

other advantage, has not dissipated the inclination of shippers to route via other lines despite the fact that we can handle it through. We haven't any monopoly on that routing.

Q. Now, will you answer my question? You mean to say you don't think you will get any competitive advantage from this situation by precluding the necessity of a shipper [fol. 1361] changing lines at Minnesota Transfer?

A. My observation is that such advantage would be negligible, yes, sir.

Q. Whatever your own views may be, at least in so far as they have been stated here this morning on the point I have been interrogating you on, do you think as a matter of actual practice that your solicitors, in soliciting traffic, would emphasize the point that if your shippers ship all the way through to points competitive east of Minnesota Transfer on the Milwaukee, that there will be no need for a change of lines at the Transfer?

A. What these solicitors might use in their efforts,—yes, they would mention, they would want to get the long haul. As I said before, and they would be remiss if they didn't try to do that.

Exam. Dishman: Haven't you stated they already do that on traffic that originates on the Milwaukee?

The Witness: Yes.

Exam. Dishman: You don't anticipate any change, do you?

The Witness: No, it is the same.

Exam. Dishman: Isn't that clear?

Mr. Hillman: I am asking a different point.

By Mr. Hillman:

Q. Wouldn't they mention if the Milwaukee would get the long haul, the fact that it wouldn't be necessary to make a transfer at Minneapolis?

[fol. 1362] Colloquy Between Examiner and Counsel

Exam. Dishman: Mr. Engel has stated they do that now on traffic that does originate—

Mr. Hillman: Yes, I understand his point; certainly the solicitors try to get the longest haul on the Milwaukee that they can.

Exam. Dishman: Yes, and they will still do it.

Mr. Hillman: The very fact they have the additional selling point of being able to keep this traffic on one line fortifies their argument and strengthens their position.

Exam. Dishman: See if we are talking about the same thing.

Mr. Hillman: They are two points.

Exam. Dishman: You admit there is traffic originating on the Milwaukee which can now move on past Minnesota Transfer?

Mr. Hillman: Yes.

Exam. Dishman: As I understand Mr. Engel's testimony, his solicitors do not plan to change their tactics if they gain traffic originating on the S. P. & S., isn't that right?

The Witness: That is right.

Exam. Dishman: It seems to me we are just going over and over this subject and not accomplishing anything additional.

Mr. Hillman: Tactics is a fairly broad word. My whole point is this and I am sure you understand it,—I think perhaps we all understand it and it has been explained by the witnesses before, that any carrier who is in a position to point out to shippers it has a single haul and a transfer [fol. 1363] is not necessary, has a substantial competitive advantage. Mr. Engel, in his answers to my questions, has tried consistently to avoid making that simple statement which we all know to be true but which Mr. Engel apparently feels it is in his interest to do.

Exam. Dishman: I understood Mr. Engel to state two or three times what his solicitors now do in connection with traffic which originates on the Milwaukee, and I understood him to say it would be no different, that their attitude would not change. So I think we have a lot on the record on it, I think, that is trustworthy.

Mr. Maguire: I think Mr. Hillman's statement is an unworthy insinuation as to Mr. Engel's testimony. He has been an entirely straightforward witness and to state he has avoided testifying is not true.

Mr. Hillman: I meant no reflection on the integrity of Mr. Engel. I think Mr. Engel has been an excellent witness. I don't think it reflects on his honor or competence in any respect if he tries, perhaps, to avoid giving as direct a statement as his answer might require. I mean no reflection on Mr. Engel in any way and if I give that impression, I am sorry.

Exam. Dishman: Is there any other cross examination?

Mr. Golden: I assume it will be understood that Mr. Engel will be available for any further cross examination in connection with the Portland record.

Exam. Dishman: In regard to the testimony he gave [fol. 1364] with regard to the Portland hearing?

Mr. Golden: Yes, the cross examination this morning is just going to his testimony here today.

Mr. Maguire: Yes.

Mr. Golden: Let us clear that.

Mr. Maguire: Yes; the other bridge we will cross when we come to it.

Redirect examination.

By Mr. Maguire:

Q. On these so-called cross-over routes, is it the purpose of all three of the lines you have described, that is, the Great Northern, Northern Pacific and the Milwaukee to restrict these cross-over routes to non-competitive traffic, that is, not to allow them to apply to common points served by the originating carrier, is that correct?

A. That is correct.

Q. So where they are competitive to any point, the cross-over routes and rates do not apply, is that correct?

A. Yes.

Q. Where are the S. P. & S. and the Milwaukee Railroad in competition east of Spokane?

Mr. Rockwood: I object, on the ground it calls for a conclusion of the witness. It would presuppose an opinion by this witness that the S. P. & S. is not in common management or control by the Northern Pacific.

By Mr. Maguire:

Q. Does the S. P. & S. Railway Company run east of [fol. 1365] Spokane?

Mr. Rockwood: That is a silly question.

A. No.

Mr. Rockwood: It is taking up an awful lot of space in the record.

By Mr. Maguire:

Q. I will then repeat my question: Are the S. P. & S. and the Milwaukee Railroad competitors east of Spokane, leaving out the Great Northern and the Northern Pacific from the question?

Mr. Rockwood: Same objection. You can't leave out the Great Northern and Northern Pacific.

Exam. Dishman: His answer is obvious, isn't it?

Mr. Maguire: Yes; I think that is all.

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Maguire: We will call Mr. C. E. Crippen.

C. E. CRIPPEN was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is C. E. Crippen?

A. Yes.

Q. Where do you live?

A. Seattle, Washington.

Q. What is your occupation?

A. General manager of lines west of Mobridge, South [fol. 1366] Dakota, for the Chicago, Milwaukee, St. Paul and Pacific Railroad.

Q. Will you state what your railroad experience has been?

A. About 25 years experience in railroad engineering maintenance and operation, principally with the Milwaukee Railroad.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Maguire:

Q. And did you spend any time in an official capacity on the Milwaukee Railroads, the lines east of Mobridge?

A. Yes, approximately 23 years.

Q. And in what departments were you employed at that time?

A. In the enginering department and the operating department.

Q. And what was your position when you left lines east and went out to lines west, as general manager?

A. General superintendent of terminals for the system.

Q. And was that an operating department official position?

A. Yes.

Q. And was your work restricted to terminals or was it more of a general nature?

A. It was not restricted to terminals and was of a general nature involving road operation as well as yard operation.

Q. Now, I wish you would state—just describe physically the method of interchange of equipment, both eastbound and westbound, which is originated or terminated on the S. P. & S. at Spokane, Washington.

[fol. 1367] Mr. Rockwood: Interchange of equipment; that is interchange of loaded cars?

Mr. Maguire: Yes, interchange of traffic, I should say.

Mr. Torinus: Between what lines?

Mr. Maguire: Between the Milwaukee and the S. P. & S.

Mr. Torinus: Thank you.

A. Those cars going from the S. P. & S. to the Milwaukee Road at Spokane move with the Northern Pacific cars to the Milwaukee at the Northern Pacific Interchange Yard in Spokane. Those cars moving from the Milwaukee to the S. P. & S. are delivered in the Northern Pacific yard in Spokane, during the period when the Northern Pacific is handling cars for the account of the S. P. & S. Railway.

By Mr. Maguire:

Q. And how long has the Northern Pacific been doing that, to your best knowledge and information?

A. It is an alternating arrangement and the Northern Pacific has been handling the S. P. & S. cars under this arrangement since May 15, 1952.

Q. And have you been informed as to the duration of that manner of handling?

A. My information is that the arrangement alternates every ten years and that at the expiration of the 10-year period the Great Northern will do it.

Mr. Rockwood: I move to strike that as a surmise as to what the Great Northern and Northern Pacific will do ten [fol. 1368] years hence.

Exam. Dishman: It may be stricken.

Mr. Maguire: All right.

By Mr. Maguire:

Q. Will you give us the approximate distance of the interchange between the Milwaukee and Great Northern from the Milwaukee yards at Spokane?

Mr. Rockwood: I have a map of the Spokane terminal which I will be very glad to make available to the witness if he wishes to refer to points within the Spokane terminal.

Mr. Maguire: I think the witness has such a map if he needs it.

Exam. Dishman: Do you have one available?

The Witness: I have one.

Exam. Dishman: Would you like to see it?

The Witness: No.

Exam. Dishman: Would you like to see one?

The Witness: I don't think so at the moment.

Mr. Rockwood: It might help us.

Exam. Dishman: Let us proceed.

Mr. Rockwood: It is very difficult to follow designations or locations as to a terminal, unless you have a map.

Mr. Maguire: I have no doubt when your turn comes, you can reserve that right.

Mr. Rockwood: I am sure of that but I thought we could have the map so that the Examiner could spot the points [fol. 1369] when the witness refers to them.

Mr. Maguire: Let us go ahead.

A. Approximately 1.2 miles from the Northern Pacific interchange yard to the Milwaukee yard at Spokane.

Exam. Dishman: This testimony now is just as to that one point, Spokane?

The Witness: Yes.

By Mr. Maguire:

Q. Does the S. P. & S. run trains into the Spokane switching area?

A. Yes.

Q. And just describe what the physical operation is as to who goes where to pick up cars or leave cars. The eastbound cars, let us take the eastbound interchange, first.

A. Those cars moving eastbound on the S. P. & S. Railway being delivered to the Milwaukee Railroad are delivered in the Northern Pacific interchange yard for the account of the S. P. & S. at which point the Milwaukee Railroad picks up the cars with our switch engine. Any cars destined to the S. P. & S. Railroad from the Milwaukee are delivered by the Milwaukee Road switch engine to the Northern Pacific interchange yard and are taken from there by the Northern Pacific switch engine for the account of the S. P. & S.

Mr. Rockwood: Taken where?

The Witness: To any point that might be appropriate. If it is a road haul car it probably would go to a train yard. [fol. 1370] If it were an industry local to the S. P. & S. it would be handled appropriately for that purpose.

Mr. Rockwood: I want to follow this. It is a very complex arrangement. I spent a day looking it over. The Northern Pacific, with a switch engine, takes the S. P. & S. car somewhere, is that correct?

The Witness: That is correct.

Mr. Maguire: Are you through with your cross examination now, so I can resume my direct?

Mr. Rockwood: Yes.

By Mr. Maguire:

Q. Then what is done by the Milwaukee with any cars that receive these eastbound cars for points east of Spokane?

A. Any cars received by the Milwaukee Road from the S. P. & S. are taken to the Milwaukee Road yard in Spokane and placed in trains for eastbound movement.

Q. And what is the movement from there on, then? Describe the manner in which they get to the eastbound scheduled trains.

A. We operate a freight from Spokane to Plummer Junction which is a junction on our through freight route at which point the cars are given to train #264, which is our through time freight from Seattle-Tacoma, destined to Chicago.

Q. Now, then, will you start at the other end and take westbound cars destined to interchange to the S. P. & S., and describe the physical operations incident to taking that [fol. 1371] car from the through freight, the time freight and bringing it up to the Northern Pacific yard.

A. The westbound through time freight, No. 263, starts out at Plummer Junction, those cars destined to Spokane and connections at Spokane, at which point, Plummer Junction No. 63 picks up the Spokane cars and takes them into Spokane. From Spokane yard they are delivered by switch engine to the appropriate location, cars for the S. P. & S. being delivered to the interchange yard.

Q. Now, I am going to hand you Exhibit 9 in this case and there is a Plummer Junction shown on that map, is there?

A. Yes.

Q. Now, are there any physical difficulties in connection with the interchange of traffic moving in either direction between the Milwaukee and the S. P. & S.?

A. There are no physical difficulties.

Q. You mentioned Train No. 264, the time freight. Will you describe what regular scheduled freights are running over that portion of the Milwaukee Railroad under your jurisdiction?

A. There is a regularly scheduled eastbound time freight operating from Tacoma to Chicago, known as No. 264, and a regularly scheduled westbound time freight operating from Chicago to Seattle-Tacoma known as No. 263. There is regularly scheduled connecting service between Plummer Junction and Spokane for both of these trains. Additional service on the main track is provided as required to meet [fol. 1372] the traffic requirements.

Q. Is there any electrified territory between Spokane and Mobridge and, if so, what is the length of it, and between what points?

A. There is electrified territory between Spokane and Mobridge extending between Avery, Idaho and Harlowtown, Montana, a distance of 440 miles.

Q. And with regard to the electrical operations, how many electric locomotive units are in operation, that is, freight units are in operation over that line?

A. There are 25 electric freight locomotives operating in that territory.

Q. And how does the number of electric locomotive units presently in use or, say, in 1953, compare with 1943, for example?

A. We have the same number of electric locomotive operating now as operated in 1943. There are three additional units employed in those locomotives at the present time, as compared with 1943.

Q. And have you made examination of the profiles between Spokane and St. Paul of the Milwaukee Road, as compared with those of the Great Northern and Northern Pacific?

A. Yes, I have.

Q. And where did you get possession of those profiles for the other two lines?

A. An exchange of information between the engineering [fol. 1372a] departments of the railroads placed in our files the profiles of the other railroads.

Q. How do the grades between St. Paul and Spokane compare on the three railroads, in each direction?

Mr. Torinus: I object to that question. The profiles will speak for themselves, and I object to this witness drawing some conclusion on some profiles which are not in evidence. This is not the best evidence.

Exam. Dishman: They are not in evidence yet?

Mr. Torinus: They are not in evidence yet. I think the profiles will show the grades much better than this witness can describe them by cross examination.

Mr. Maguire: As far as profiles are concerned, the rules of evidence don't apply. For the purpose of cross examination this witness will have the different profiles for the purpose of eliciting his testimony.

Mr. Torinus: I object to it because the question asks for an answer which is not the best evidence. There is also an objection because it is hearsay.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Maguire: I will withdraw the question for the moment.

By Mr. Maguire:

Q. What is your maximum grade eastbound on the three lines as shown by these profiles?

[fol. 1373] Mr. Torinus: I object as calling for a conclusion and not being the best evidence; the profiles will show that.

Mr. Maguire: The rule of best evidence doesn't apply here. The witness can show from the profiles and they are available for cross examination.

Exam. Dishman: You do not plan to put those in evidence?

Mr. Maguire: No, I don't plan to.

Mr. Rockwood: Why not?

Mr. Maguire: Because I haven't enough copies at the moment.

Mr. Rockwood: They can be reproduced later.

Mr. Maguire: You can look at them; they are available to see.

Exam. Dishman: Inasmuch as they are available for examination, the witness may answer.

A. The maximum grade eastbound on the Milwaukee between Spokane and the Twin Cities is 1.7 percent; the maximum grade eastbound on the Great Northern, between Spokane and the Twin Cities, is 1.8 percent. The maximum grade eastbound on the Northern Pacific, between Spokane and the Twin Cities, is 1.9 percent.

By Mr. Maguire:

Q. Now, what are your maximum grades westbound?

A. The maximum grades westbound on the Milwaukee, Twin Cities to Spokane, 2.0 percent; on the Great Northern, 1.0 percent; and on the Northern Pacific, 2.2 percent.

Q. Are you familiar with the character of traffic, that is, as to size of individual loads, that is handled over the Milwaukee Railroad, between Mobridge and the interchange at [fol. 1374] Spokane or a point equivalent to the interchange at Spokane?

A. Yes.

Q. Do you have any difficulties in handling high wide loads over that portion of the line?

A. No, not within the range of normal high wide loads.

Q. And are you in a position to draw any comparisons between the ability of the Milwaukee Road and of the Great Northern and the Northern Pacific to handle such loads?

Mr. Torinus: Well, now—

Mr. Maguire: I haven't asked him any question yet.

Exam. Dishman: Are you in a position?

Mr. Torinus: I will object to that. Whether he is in a position calls for a conclusion. If he is in a position, I think he should state facts from which the Commission and the Examiner can draw a conclusion.

Exam. Dishman: Can you qualify that?

Mr. Maguire: I can qualify that.

By Mr. Maguire:

Q. Have you made an examination and are you familiar with the maximum load limits as shown by various publications issued by the Great Northern and Northern Pacific or the Association of American Railroads, with reference to those lines and also as to the maximum height and width of those that can be handled by the Milwaukee Railroad to the same territory?

A. I have the published information concerning the maxi- [fol. 1375] mum dimension of loads that can be handled by the lines between the Twin Cities and Spokane.

Q. Are you able to give us any comparative figures as to maximum weights, as to the load that can be handled over those various lines?

Mr. Torinus: I object. He hasn't stated what publications he has examined.

Exam. Dishman: What publications have you examined, and are they here for examination by counsel present?

The Witness: The publication which I have examined is entitled: Railway Line Clearances and Car Dimensions including Weight Limitations of Railroads in the United States, Canada, Mexico and Cuba, as published annually by the Railway Equipment and Publication Company in cooperation with the Association of American Railroads.

Exam. Dishman: Is that available for examination by any party who wants to look at it?

The Witness: Yes, it is.

Mr. Torinus: I renew my objection. If there is any information in that publication, I think it should be offered in evidence rather than have this witness read it and draw his conclusion from it. That is the basis for the objection.

Mr. Maguire: I am asking the witness to read from them and the figures themselves,—the figures will speak for themselves.

Mr. Torinus: You haven't asked that yet; you have asked [fol. 1376] for conclusions.

Mr. Maguire: You have been objecting before I have had a chance to ask questions.

Mr. Torinus: My objection is to your latest pending question.

Exam. Dishman: You are asking now for him to read from this publication.

Mr. Maguire: Do you have that available?

Exam. Dishman: Do you want him to read now?

Mr. Maguire: I have another preliminary question first.

Exam. Dishman: All right.

By Mr. Maguire:

Q. Do you also have available clearance instructions and regulations issued by the Milwaukee Railroad for its own operating officers?

A. Yes.

Q. And will you read from these various papers which I have mentioned, the maximum widths of loads permissible between St. Paul and Spokane via these three railroads? You can go right across the line on each one of them. You may take a little time. It is now 12:30. Do you wish to adjourn for lunch?

A. Yes.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman. On the record. We will recess for lunch until 2 o'clock.

(Whereupon, at 12:30 o'clock, a recess was taken until 2 p.m. of the same day.)

[fol. 1377] AFTERNOON SESSION 2:00 p.m.

Exam. Dishman: The hearing will come to order, please.

C. E. CRIPPEN resumed his testimony as follows:

Direct examination (continued).

Mr. Maguire: I believe I had put a question just before the recess. Will you repeat it?

(Question repeated.)

Mr. Rockwood: Tell us what you are reading from.

The Witness: Referring to the publication entitled: Railway Line Clearances, printed May, 1954, on page 476 and 478 under column 103,—numbered 103: covering clearances on the Northern Pacific Railway, at a height of 17 feet 6 inches above the top of rail.

Mr. Torinus: Between what points are those clearances on the Northern Pacific in Column 103, does it say?

The Witness: Column 103 covers the route Minnesota Transfer, Minnesota (Twin Cities), to Spokane, Washington, via Helena, Montana and St. Regis, Montana.

Mr. Torinus: That does not include the line between Spokane to Seattle?

The Witness: I assume it is confined to the area described, Minnesota Transfer to Spokane.

Mr. Torinus: You assume that; doesn't that book say so?

The Witness: That is what it says, yes. At a height 17 [fol. 1378] feet 6 inches above top of rail, a load 7 feet 7 inches in width may be handled without restriction. At a height of 17 feet 3 inches above top of rail, a load 7 feet 10 inches in width may be handled without restrictions.

Mr. Maguire: In order to shorten this, may we assume that these heights and widths are all referring to maximum widths in all these discussions without restrictions?

The Witness: Yes.

By Mr. Maguire:

Q. Proceed.

A. On page 351 of the same publication under column numbered 1, which covers the line, Minnesota Transfer, Minnesota, and St. Paul, Minnesota, via the Great Northern Railroad: Height above top of rail, 17 feet 3 inches.

Mr. Rockwood: Is that to Spokane, yes.

The Witness: That is right.

Mr. Rockwood: Minnesota Transfer, Spokane?

The Witness: Yes.

A. (continued) Height: 17 feet 3 inches above top of rail; width of load 8 feet 6 inches, and on page 352 of the same publication there is the line: Minnesota Transfer to Spokane on the Great Northern, under column numbered

18: 17 feet 3 inches above top of rail, width of load, 8 feet 6 inches.

On page 308 of the same publication for the line: Minneapolis and St. Paul, Minnesota, to Spokane, Washington, under column 9: the clearances on the Milwaukee Railroad: A load 17 feet 3 inches above top of rail: 6 feet [fol. 1379] 0 inches wide, without restriction.

My studies indicate that the limiting clearance in this case is the overhang of the umbrella shed in the Spokane Union Station and that obstacle is not involved in the movement or handling in interchange of cars between any of the connecting lines at Spokane nor in the road haul movement or high wide loads on the Milwaukee Railroad in or out of Spokane.

Eliminating that obstacle we are able to handle a load 17 feet 3 inches high above top of rail—

Mr. Torinus: Now you are looking at some other source?

The Witness: I am looking at a memorandum developed from an investigation of our clearance information with our engineering department. It is not published information but supplied to application by representatives of the Milwaukee Railroad.

Mr. Rockwood: May we have a copy of it?

By Mr. Maguire:

Q. Do you have a copy of that information?

A. No, sir.

Exam. Dishman: Could you supply one later?

The Witness: Yes.

Exam. Dishman: Would you like that in the form of a late-filed exhibit?

Mr. Rockwood: I would like to have it in the form of a late-filed exhibit but I would like to have it furnished to us as quickly as possible because we may want to work with it.

[fol. 1380] Mr. Maguire: I think that whatever lists may be made, I don't know whether it is the list form or instructions form, or whatever it may be, counsel is certainly entitled to that for the purpose of cross examination and we do not deny them that right, but the idea of furnishing it to them for any other use, I don't believe that is within the scope of the inquiry.

Mr. Rockwood: Here the witness is reading a portion of a document and I think the entire document should be in so that we may know and appreciate and understand the significance of the fragmentary part of it that he reads.

Mr. Maguire: As I say, I have no objection to having that available for cross examination but to have the whole document I don't know how big it is; I think it is quite large.

Exam. Dishman: How big a document is it?

The Witness: It is not published; it is available to our engineering department on application only. It is not really published information.

Mr. Rockwood: It isn't something in your hand momentarily. Could I examine that?

Mr. Maguire: Yes; it is your notes on that clearance that you are refreshing your memory on?

Mr. Rockwood: What you are handing me is not a published document?

The Witness: That is what I said.

Mr. Rockwood: The information you first had appeared [fol. 1381] to be a typed document and the memorandum you made from the typed document.

The Witness: This is a memorandum I made from information that I obtained from my engineering department.

Mr. Rockwood: The information you had a moment ago you were not reading from?

The Witness: That is correct.

Mr. Rockwood: And there is no published document?

The Witness: That is correct.

Mr. Rockwood: I misunderstood; I thought that you were reading from a Milwaukee publication.

The Witness: No, sir.

By Mr. Maguire:

Q. Would you furnish the figure you obtained from our engineering department as to the maximum height of 17 feet 3 inches where you do not go via the umbrella shed at Spokane which was your controlling clearance otherwise.

A. That is 17 feet 3 inches high above top of rail, 9 feet 4 inches wide, with certain speed restrictions in the limiting structures.

Q. Where are the limiting restrictions and what is the distance at which the reduced speed must be maintained?

A. The location of the limiting structures are tunnels 21, 32, and 36 on the Rocky Mountain Division. The speed restriction is 10 miles per hour and the application of the speed restriction is while passing that obstacle.

[fol. 1382] Q. And is it going through or entering that particular tunnel?

A. Yes.

Q. Go ahead.

A. We can also handle a load 17 feet 6 inches above top of rail, 7 feet 6 inches wide, with the same limitation as to speed, and the location of that restriction is the Fremont Avenue Bridge at Minneapolis, and the restriction is 10 miles per hour.

Q. Now, can you go down the line, the other heights besides 17 feet 6 inches and 17 feet 3 inches, that you have covered here? Do you have those figures available?

A. For the limiting condition at 17 feet 0 inches, a load 9 feet 8 inches wide.

Q. On what railroad is this?

A. This is the Milwaukee Railroad under the limiting conditions.

Q. How wide?

A. 9 feet 8 inches.

Q. Continue.

A. At 16 feet 9 inches above top of rail, 10 feet 0 inches wide; at 16 feet 6 inches above top of rail, 10 feet 4 inches wide. At 16 feet 3 inches above top of rail, 10 feet 6 inches wide. At 16 feet above top of rail, 10 feet 10 inches wide. At 15 feet 9 inches above top of rail, 11 feet 0 inches wide. At 15 feet 6 inches above top of rail, 11 feet 2 inches wide.

Mr. Torinus: Are you giving that information from the [fol. 1382a] first publication you referred to or from some notes you made from the Milwaukee Engineering Department records?

The Witness: These are not from a published document but are pencil notes I have made from information obtained from our engineering staff.

Mr. Torinus: You said those figures were under some limiting conditions.

The Witness: Yes.

Mr. Torinus: Are you going to state what those are?

The Witness: I have done that; 10 miles per hour.

By Mr. Maguire:

Q. Is that 10 miles an hour at tunnels 21, 32 and 36 that you mentioned in connection with the 17 feet 3 inches limitation?

A. They are, yes, with reference to all of the heights mentioned except with respect to 17 feet 3 inches and that is the Fremont Avenue bridge.

Q. Now, Mr. Crippen, can you refer back again to the publication you are reading from, the one you have before you there and read across at these different heights for the Northern Pacific, the Great Northern and the Milwaukee, as shown by the publication? I think you were down to 17 feet 3 inches for the other two lines.

A. Again referring to page 476-478, in the publication Railway Line Clearances under column numbered 103.

Q. What railroad is that?

[fol. 1383] A. The Northern Pacific Railroad. At a height of 17 feet 0 inches, a load 8 feet 5 inches wide; at a height of 16 feet 9 inches, a load 8 feet 9 inches wide; at a height 16 feet 6 inches, a load 9 feet 1 inch wide. At a height 16 feet 3 inches, a load 9 feet 5 inches wide; at a height of 16 feet 0 inches, a load 9 feet 10 inches wide; at a height of 15 feet 9 inches, a load 10 feet 2 inches wide; at a height 15 feet 6 inches, a load 10 feet 5 inches wide; at a height of 15 feet 3 inches, a load 10 feet 8 inches wide; and at a height of 15 feet 0 inches, a load 10 feet 11 inches wide.

Referring to page 351, the Great Northern Railroad, resuming in column No. 1: At a height 17 feet 0 inches, a load 9 feet 0 inches wide; at a height of 16 feet 9 inches, a load 9 feet 6 inches wide; at a height 16 feet 6 inches, a load 10 feet 0 inches wide; at a height 16 feet 3 inches, a load 10 feet 6 inches wide; at a height 16 feet 0 inches, a load 10 feet 10 inches wide; at a height of 15 feet 9 inches, a width of 11 feet 4 inches; height, 15 feet 6 inches, a width of 11 feet 6 inches. At a height of 15 feet 3 inches, a width of 11 feet 6 inches, and at a height of 15 feet 0 inches, a width of 11 feet 6 inches.

Q. Now, can you bring us down in the same publication on the Milwaukee. Are all of those maximum widths without restriction?

A. On the Great Northern and Northern Pacific they are [fol. 1384] maximum widths and without restriction. Do I understand that your inquiry now refers to the published information with reference to the Milwaukee Road?

Q. Yes, and I would like to ask one preliminary question to clarify this: Are those all subject to the controlling or governing clearance of the umbrella shed at Spokane, the Union Station shed?

A. They are all subject to that limiting clearance at the umbrella shed at Spokane and therefore are not indicative of the limitations that must be imposed on a load handling from Spokane to connecting lines or in road movement.

Mr. Rockwood: May I inquire while you are right on that: is every one of the published figures, whatever height, limited to 6 feet because of the limitation at Spokane?

The Witness: Where the limiting width is 6 feet at whatever height shown on the line, Minneapolis-St. Paul to Spokane, the limiting clearance is the umbrella shed at Spokane Station.

Mr. Rockwood: In the published book that limitation of 6 feet is shown generally for several heights, is it not?

The Witness: It is shown for several heights and at each height it is shown the limiting structure is the umbrella shed at Spokane.

Mr. Rockwood: I understand that, but since you are reading a book and it is not in the record, I may be pardoned for asking a few questions as you go along. For the Mil- [fol. 1385] waukee, in the book, what is your width limit for, say, 17 feet as published in the book?

The Witness: 6 feet 0 inches.

Mr. Rockwood: For 16 feet?

The Witness: 6 feet 6 inches.

Mr. Rockwood: Is that 6 feet 6 inches also limited by the shed at Spokane?

The Witness: Yes, sir.

Mr. Rockwood: Thank you.

By Mr. Maguire:

Q. How far down? I mean to what maximum height does that limiting factor of the umbrella shed at Spokane apply?

A. 15 feet 6 inches.

Q. Now, you are down to 15 feet 6 inches, so far as the Milwaukee zone engineering department data is concerned, and can you go from there on down reading the figures for the three lines, which are shown in this publication of the Railway Equipment and Publication Company along with the Association of American Railroads in May, 1954, this document you are reading from; can you then make parallel statements from 15 feet 6 inches on down as to the three lines, so that we may have a basis.

Mr. Rockwood: He has done it for the other lines down to 15 feet.

Mr. Maguire: Yes; you are quite right.

By Mr. Maguire:

Q. You might bring down the Milwaukee to 15 feet there [fol. 1386] and then can you read across on them; that is, give us figures from there on down, subject to whatever explanation you wish to make from the Milwaukee engineering data?

A. Yes; continuing with data furnished by the Engineering Department of the Milwaukee Road, at height of 15 feet 3 inches above top of rail, a load 11 feet 4 inches wide; at a height of 15 feet 0 inches, a load of 11 feet 6 inches wide; at a height 14 feet 9 inches—

Mr. Rockwood: Do you want to go beyond that, or is it then for the other loads below 15 feet?

Mr. Maguire: Let him go ahead.

A. (continued) Height 14 feet 9 inches, a load 11 feet 8 inches wide; a height of 14 feet 6 inches, a load 11 feet 10 inches wide; a load 14 feet 3 inches high, 12 feet 0 inches wide; 14 feet 0 inches high, 12 feet 2 inches wide.

By Mr. Maguire:

Q. Let me interrupt you there just a moment. On those figures are there any restrictions on those from 15 feet on down?

A. All of these dimensions are subject to the same limitations as previously given.

Q. That is, 10 miles an hour through Tunnels 21, 32 and 36?

A. No; I can't say that. At a different height the limiting factor may be some other structure at some other location. In other words, if it were a load 14 feet high, the limitation may be imposed because of something other than the tunnel. [fol. 1387] Q. Is your speed limitation the same in each case, 10 miles an hour?

A. The limitation will vary depending upon the individual structure and the location. It may be speed; it may be something else.

Q. Now you are down to 14 feet.

A. At a height of 13 feet 9 inches—

Mr. Rockwood: Are you going all the way down to zero height for zero feet above rail?

Mr. Maguire: We are going down as far as they go.

Mr. Rockwood: That goes to zero in the book.

Mr. Maguire: We won't go below the rail.

Mr. Rockwood: What kind of a structure is it that is 1 foot above the rail? I am curious to know what kind of vehicle that would be.

The Witness: Are you inquiring of me?

Mr. Rockwood: What kind of railway vehicle is only 1 foot above rail?

The Witness: Special equipment, depressed flats, etc., limiting structures may be gussets in bridge floor, something of that nature.

By Mr. Maguire:

Q. I wish we could do this now, Mr. Crippen; you have 15 feet. Now, let us go to 14 feet 9 inches, and show what the maximum widths are from this pamphlet for all three lines. Can't we do that now?

[fol. 1388] A. Continuing from the Milwaukee Railroad line clearance, page 308, column 9, at a height of 13 feet 9 inches—

Q. Let us go to 14 feet 9 inches and start there and take all three of them, from there on in the publication.

Mr. Torinus: Are we omitting some part of this publication for the Milwaukee, some heights? Can't we have the complete story?

Mr. Maguire: You can; you can later, yes. I am starting at 14 feet 9 inches as shown in the publication itself.

The Witness: At a height of 14 feet 9 a width of 11 feet 0 inches.

By Mr. Maguire:

Q. For the Milwaukee Railroad?

A. Yes. Page 308, column 9; at a height 14 feet 6 inches, a load 11 feet 2 inches wide; height of 14 feet 3 inches, width, 11 feet 4 inches; at a height of 14 feet 0 inches, a load 11 feet 6 inches wide. At a height 13 feet 9 inches, a load 11 feet 8 inches wide; at a height of 13 feet 6 inches, a width of 11 feet 10 inches; a height of 13 feet 3 inches, a width of 12 feet 0 inches; and at all heights between 13 feet 3 inches and 4 feet 6 inches, a load 12 feet 0 inches wide. Then at a height 4 feet 0 inches, a load 11 feet 2 inches wide.

Q. Now, let us digress for a moment here and go back and catch up the similar figures for the Northern Pacific and the Great Northern.

Mr. Rockwood: Then are you going back and finish up the [fol. 1389] Milwaukee?

Mr. Maguire: I don't know what we are going to do.

Mr. Rockwood: I wish we could get these figures this way; let us finish one railroad and then another, and then the third.

Mr. Maguire: I think the insistence of counsel that I put my case in in his way is an impertinence.

Exam. Dishman: Just the best possible way for the record.

Mr. Maguire: At the moment I don't propose going below 4 feet. So we are completed, which is the ordinary flat car.

Mr. Torinus: I am not sure you are completed above 14 feet 9 inches, as far as this publication is concerned.

Mr. Maguire: You can go into that on cross examination. I am relying on the figures I have put in the record. Go ahead and start at 14 feet 9 inches for the Northern Pacific and the Great Northern.

The Witness: At page 476-478 of the publication Railway Line Clearances, for the Northern Pacific, at column 103, at a height of 14 feet 9 inches, a load 11 feet 4 inches wide; at a height 14 feet 6 inches, and for all heights to and including 3 feet 3 inches, a load 11 feet 6 inches wide.

Turning to page 351 and resuming with the Great Northern at column 1: At a height 14 feet 9 inches and all heights to and including 3 feet 3 inches above top of rail, a load 11 feet 6 inches wide, as shown in column 1. For the column 18: height 14 feet—

[fol. 1390] Mr. Rockwood: Are we talking about the Great Northern still?

The Witness: Continuing with the Great Northern, column 18, page 352—

Mr. Torinus: What is the difference between column 1 and column 18?

The Witness: They are two listings of clearances and then the difference is that column 1 requires advance notice for special handling under the clearances as shown under column 1, but this is not true under column 18.

By Mr. Maguire:

Q. On the Great Northern, are these column 1 figures you have given us already,—are those the ones that require advance notice of special handling?

A. They are. Continuing on column 18 for the Great Northern Railroad: At a height 14 feet 9 inches, a load 10 feet 6 inches wide; and for the heights 14 feet 6 inches and 14 feet 3 inches, a width of 10 feet 6 inches, and for a height 14 feet 0 inches down to and including a height 2 feet 3 inches, a width of 11 feet 6 inches.

Q. And are those latter ones without advance notice and special handling, column 18?

A. Yes, that is right.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. You read figures, I notice, from your data from the engineering department on these clearances which is [fol. 1391] different from the clearances shown for the Milwaukee in the publication Railway Line Clearances?

A. Yes.

Q. Did you make any investigation to find out what variations there would be from Railway Line Clearances figures of the Great Northern and Northern Pacific from their engineering department?

A. No.

Q. Do you have any notion where the limiting structures are of the Great Northern and Northern Pacific which result in these figures in Railway Line Clearances?

A. No, sir.

Q. Where is the Fremont Avenue bridge in Minneapolis; is that on the main line of the Milwaukee, in Minneapolis?

A. It is on the 29th Street depression lying between South Minneapolis and St. Louis Park.

Q. Yes, but Fremont Avenue is west of your terminal yards in Minneapolis?

A. Yes, west of our yards in South Minneapolis, yes.

Q. So it is on the main line west of your terminal yards in South Minneapolis?

A. Yes.

Q. Do the main line trains come in over that line?

A. Yes.

Q. Is it an overhead bridge for vehicular traffic?

[fol. 1392] A. Yes.

Q. You have no information as to where the limiting structures are as to the Northern Pacific and Great Northern?

A. I do not have that.

Q. Is it possible for you to bring a main line train into Minneapolis from the west into your terminal, without going over your Fremont Avenue bridge?

A. Via Cologne and Farmington.

Q. And then it approaches Minneapolis from the east?

A. Yes.

Q. You would run the train from Cologne and Farmington into St. Paul and then west to your terminal yard at Minneapolis?

A. We could but it is not necessary; it is not necessary with a load 17 feet 6 inches high and 7 feet 6 inches wide, or a load 17 feet 3 inches high and 9 feet 4 inches wide; we can move under the Fremont Avenue bridge.

Q. I mean in so far as the Fremont Avenue bridge does require limitation on heights and widths all loads which you would not encounter anywhere else in the vicinity, to avoid that you would have to move in through Cologne and Farmington, into St. Paul and then pull the load into Minneapolis if it were a Minneapolis load?

A. No, we would not move it that way because we would encounter the same kind of limitations via Farmington, so nothing would be accomplished, so the direct route is the [fol. 1393] route taking the biggest load.

Q. So if you have a load which wouldn't go over the Fremont Avenue bridge, it couldn't go Farmington, so that load wouldn't get into the Minneapolis yard, would it?

A. If it exceeded the limitations we have mentioned here, it couldn't reach by direct or through route into Minneapolis.

Q. Into the Minneapolis terminal?

A. That is right.

Q. Do you have operating instructions which you publish and issue to your operating forces in addition to tables, we will say, of limiting heights and widths?

A. Yes, sir.

Q. And there are possibilities of moving around, if you have an out-size load, to avoid an obstacle if the car were to move on the normal direct route, isn't that true?

A. That is right.

Q. And isn't that true of all railroads?

A. Yes.

Q. So that if there is a limiting structure on the Great Northern on the line between Minneapolis and St. Cloud, it is possible to move that car from Minneapolis to Wilmer

and avoid the obstacle on the St. Cloud line; that is common in railroad practice, is it not?

A. The practice is common. I can't answer your first question of course. I don't have the exact information.

[fol. 1394] Q. I picked St. Cloud and Wilmer out of the blue, but if there were an obstacle it is common for all railroads having alternate routes to go around the obstacle?

A. Yes, it is customary to have alternate routes available.

Q. How long have you had your headquarters in Seattle?

A. About a year and a half.

Q. I take it in that year and a half you have acquired familiarity with the handling of cars of the Milwaukee through the Spokane terminals interchanged with the Spokane, Seattle Railway Company?

A. Yes.

Q. Then tell us, will you please,—just trace the exact movement, if you can, of a car moving over the S. P. & S. coming in on a main line train eastbound on the S. P. & S. until it is in a main line train of the Milwaukee at Plummer Junction, just what roads handle it?

A. It comes in on the S. P. & S. to Scribner, where the S. P. & S. road train sets it out, and S. P. & S. turn operating from the Northern Pacific Yardley yard in Spokane picks up the cars at Scribner and moves them into the Yardley yard. The Northern Pacific delivers the car in the Northern Pacific interchange yard for the Milwaukee. The Milwaukee puts it into a train at Spokane, and moves it to a connection with the through time freight at Plummer Junction.

Q. Where does the Northern Pacific make up its main line [fol. 1395] trains for eastbound movement?

A. Yardley yard.

Q. So that when the train comes in from Scribner with S. P. & S. power into the Yardley Yard, it is immediately available to put in an eastbound train over the Northern Pacific, is it not?

A. It is in the same yard, yes.

Q. The Northern Pacific does all the interchange for the S. P. & S., as well as the Union Pacific, Spokane and International, and the Milwaukee?

A. Yes.

Q. And switches the local deliveries, S. P. & S. cars in the city of Spokane?

A. Yes.

Q. When that S. P. & S.—I have forgotten how you characterize that train from Scribner into Yardley?

A. A turn.

Q. A shuttle service, something like that?

A. Yes.

Q. When that S. P. & S. turn or shuttle service leaves Scribner it has in it all cars for delivery to the Northern Pacific and Union Pacific, the Spokane-International, the Milwaukee and for local delivery in Spokane, does it not?

A. Yes, except those cars which deliver by the Great Northern for the account of the S. P. & S.

Q. Yes, up along the Great Northern line, a few local deliveries?

[fol. 1396] A. Yes.

Q. Except for that, it has all local deliveries for the S. P. & S. in Spokane?

A. Yes.

Q. When that grain gets to Yardley it has to be broken up and the Northern Pacific, Spokane and International, and the Milwaukee local delivery cars taken out of the train?

A. Yes.

Q. What is the next movement of that train; where are the railway cars taken? The road cars?

A. The road cars, I presume, go into road trains and the interchange cars are delivered to the interchange lines, and the local delivery cars are delivered.

Q. Isn't it a fact that those cars included all cars to be interchanged of all railways and the cars to be locally delivered by the Northern Pacific are moved via the Northern Pacific in a group down to a Northern Pacific yard know as the Erie Street Yard?

A. In my investigation I investigated the manner of the arrival of cars at Spokane.

Q. And the delivery of cars to there?

A. To the Milwaukee Railroad, I couldn't accurately outline the intermediate moves between arrival and delivery.

Q. Is it a fact that at the Erie Street yard, the train is again broken up and the Milwaukee cars set out for move-

[fol. 1397] ment to the Milwaukee interchange track where you receive them, do you not?

Mr. Maguire: The witness has said he has not traced the movement of those cars in an answer to the immediately preceding question of Mr. Rockwood and Mr. Rockwood is continuing to ask him questions whether he does not know something he has already said he does not know.

Exam. Dishman: Is that right?

The Witness: Yes.

By Mr. Rockwood:

Q. But somewhere or other, cars get into trackage which is the point of interchange between the Northern Pacific and the Milwaukee?

A. That is right.

Q. At that point the car is in the possession of the Milwaukee?

A. Yes.

Q. From that point does the Milwaukee move those cars down to its own yard at Division Street?

A. Yes, the general vicinity of Division Street, yes, sir.

Q. And at Division Street your extra east is made up for movement to Plummer Junction?

A. Our Train 64 is made up for movement to Plummer Junction.

Q. And then, and only then, is that car in a line haul train for movement out of the Spokane terminal?

A. Yes, as soon as it has been received and placed in a train and is ready for movement out of the terminal.

[fol. 1398] Q. And then goes on to Plummer Junction?

A. Yes.

Q. Do your time freights east stop at Plummer Junction to pick up Spokane cars?

A. Yes.

Q. At one time was it your practice to put your Spokane cars in the time freights east at Avery?

A. It may have been accomplished at St. Maries at some time in the past, or it may have been accomplished at Avery, or possibly some point east. Our present practice is at Plummer Junction.

Q. Have you ever checked to determine the interval between the time of arrival of S. P. & S. cars at Yardley and the time out of Yardley in a Northern Pacific time freight?

A. No, sir.

Q. Have you ever made a check to determine for any period or any group of cars or any sampling of cars, the time consumed between the time of arrival of the car of the S. P. & S. train in Scribner, and the time it is put in your time freight east of Plummer Junction?

A. No.

Q. That which we have been discussing up to now has been the movement of a Milwaukee car through the Spokane terminals and cars interchanged with the Northern Pacific. Are you familiar with the handling of S. P. & S. cars through [fol. 1399] the Spokane terminal for delivery to the Great Northern for movement east?

A. Delivery by the Milwaukee to the Great Northern?

Q. Now, we are now leaving the Milwaukee out of it entirely. We are taking an S. P. & S. car coming in from the west moving eastbound for a movement out of Spokane over the Great Northern. Are you familiar with that method of interchange in handling on the S. P. & S.?

A. Yes.

Q. Where when you talked of the cut-out of the Northern Pacific cars have gone to Yardley, at Scribner?

A. Yes.

Q. The Great Northern cars remain in the train, when the S. P. & S. train reaches Scribner?

A. Yes.

Q. How far west of Spokane on an S. P. & S. train is Scribner, do you know?

A. Yes; it is 16.9 miles from Scribner to Hillyard, the Great Northern Yard, and approximately 12.1 miles from Scribner to Yardley.

Q. Incidentally, Yardley and Hillyard both are east of the passenger stations in downtown Spokane, are they not?

A. Yes.

Q. All right, when the train carrying a car destined to the Great Northern reaches Scribner, what happens to it after that?

A. It is in an S. P. & S. road train, which goes from [fol. 1400] Scribner to Ft. Wright, through Spokane to Hillyard, the Great Northern terminal in Spokane.

Q. Do you happen to know where the ownership of trackage breaks as between the S. P. & S. and the Great Northern, on that run through Ft. Wright?

Mr. Maguire: Do you know of your own knowledge?

A. Not so far as the ownership is concerned. I know where they are controlled by time table exchanges, but so far as trackage ownerships goes, I know nothing.

By Mr. Rockwood:

Q. Do you know where the ownership of trackage breaks on a car moving on the S. P. & S. through Scribner to Yardley?

A. I don't know where the new ownership is.

Q. The road crews of the S. P. & S., as you said, take the S. P. & S. cars from Scribner up through Ft. Wright and into the Great Northern yard at Hillyard?

A. Yes, sir.

Q. At that point the cars are delivered into the possession of the Great Northern?

A. Yes.

Q. And the Great Northern time freights from the Coast to Minnesota Transfer operate through the Hillyard yard?

A. Yes.

Q. So that there is no movement required of that car except to move it from the track on which the S. P. & S. [fol. 1401] through train arrived at Hillyard, to the track to be placed in the Great Northern time freight?

A. It is in the Great Northern yard, and the handle is from there on—

Q. It eventually gets from one track over to a train on another track all in that yard?

A. Yes.

Q. And then is ready to roll east?

A. Yes.

Q. Have you made any investigation or study of the elapsed time of a movement of an S. P. & S. car from Scribner to Hillyard, into a Great Northern time freight?

A. No.

Q. You said that you have no more electric freight locomotives in 1953 than you had in 1943, but you stated you had three additional units for those locomotives, is that correct?

A. That is correct.

Q. Are electric locomotives assembled from units similar to the assembly of a diesel locomotive?

A. That is right.

Q. Have you replaced or retired any of the electric locomotives you owned in 1943?

A. Yes, we have. We acquired 12 additional units in the interim, in 1950, as a fact, and have retired some, so our total units changed in 1943 from 102 to 105 in 1953.

[fol. 1402] Q. But you group those units, or my terminology is very amateurish, I know, because I don't know much about your electric locomotives, but those units are now grouped for use into 25 locomotives; you had 25 in 1943 and you have 25 locomotives now?

A. That is right; that is in the territory between Avery, Idaho and Harlowtown, Montana.

Q. Do you operate any diesels in freight service between Avery and Harlowtown?

A. Occasionally; our normal operation is with the electric locomotive. We occasionally use some diesels.

Q. Do you use diesels on your passenger trains between Avery and Harlowtown?

A. Ordinarily we use electric on our passengers in that territory. Occasionally we use diesel.

Q. Is there any electrification of the Milwaukee except between Avery and Harlowtown?

A. Yes, between Othello, Seattle and Tacoma.

Q. Where is Othello?

A. Eastern Washington, approximately 100 miles west of Spokane.

Q. Is that electric operation incidental to your crossing of the Cascade Mountains?

A. Yes, sir.

Q. How long has that road been electrified?

A. Since about 1918,—1917 or 1918.

[fol. 1403] Q. When was the Puget Sound extension of the Milwaukee opened up?

A. About 1909, as I recall it.

Q. Do you operate diesels over that portion of your road from Othello to Seattle?

A. Our usual operation is with electric power. We occasionally use diesel in both freight and passenger service.

Q. Your new acquisitions of locomotive power for use on portions of your system other than the electrified portions has in recent years been diesel power, has it not?

A. Yes.

Q. Do you know which is more economical, diesel or electric operation?

A. It is a very large economic question. If we stick strictly with operation, with availability of regeneration, etc., our studies indicate the electrification is more economical, providing you don't have to support the investment but, as I say, that is a broad economic question and it can't be answered with one or two general answers.

Q. Is the Milwaukee a contractor for power between Avery and Harlowtown with some outside supplier of electric power?

A. Yes.

Q. How long does that contract run?

A. I do not know.

Q. Is that contract cancellable?

[fol. 1404] A. I do not know.

Q. Do you have any obligations under that contract to take any firm amount of power, do you know?

A. I will answer I do not know. I don't recall accurately.

Q. In your investigation of the relative economies of diesel and electric operations, you have never investigated to determine how long this contract ran, or what your rights are under the contract, to cancel or terminate that electric contract, have you?

A. No, sir.

Mr. Rockwood: That is all I have.

By Mr. Golden:

Q. When was your line constructed between Mobridge and Spokane? When was it completed?

A. I don't remember accurately. My recollection is it was about 1908 or 1909, some time in that area.

Q. Do you go into Spokane on your own trackage?

A. We operate jointly over the Union Pacific between Manitou and the Northern Pacific crossing in Spokane and then the Union Pacific operates over our railroad from the Northern Pacific crossing to the Spokane depot.

Mr. Golden: I have nothing further.

By Mr. Torinus:

Q. Is the highest point on your line between Spokane and Minnesota Transfer Pipestone Pass?

A. Yes, sir.

Q. What is the elevation at that point?

[fol. 1405] A. 6,347 feet above sea level.

Q. Now, just east of Pipestone Pass and, by the way, Pipestone Pass is located on your main line in Montana, is that right?

A. That is right.

Q. Where is it, with respect to Butte?

A. East of Butte about 40 miles.

Q. That is east of Butte about 40 miles?

A. Yes.

Q. Is there a descending grade on your line east of Pipestone Pass for some distance, Mr. Crippen?

A. Yes, sir.

Q. And what is the lowest elevation that you reach on that descending grade before going up again to over the Big Belt Mountains?

A. Approximately 3,969 feet above sea level.

Q. And is that near Three Forks, Montana?

A. It is west of Three Forks, yes.

Q. Just west of Three Forks?

A. Yes.

Q. So you have a descent there of roughly 2400 feet in how many miles?

A. A descent of approximately 2,378 feet in approximately 71 miles.

Q. Now, then, what is your next highest elevation on your main line between Spokane and Minnesota Transfer?

[fol. 1406] A. Approximately an elevation of 5,799 feet above sea level.

Q. Is that at Loweth, Montana?

A. Yes.

Q. You have an upgrade, then, of 1900 or 2000 feet,—maybe it is just 1900 feet in how many miles, from the point we just talked about just west of Freeport that being your lowest elevation east of Pipestone Pass before you ascend?

A. A rise of approximately 1830 feet in a distance of approximately 53 miles.

Q. Do you know, Mr. Crippen, whether or not both of those points, Loweth and Pipestone Pass are considerably higher than the maximum elevation on the Great Northern main line between Minnesota Transfer and Spokane?

A. Yes, Pipestone Pass is higher.

Q. The highest point on the Great Northern main line is at Summit, Montana, 5211 feet, is that right?

A. Yes.

Q. That is in the Glacier Park area, is it?

A. Yes.

Q. That is over 1000 feet lower than your Pipestone Pass crossing and more than 4,400 feet lower than your crossing at Loweth, is that right?

Mr. Maguire: We will accept your arithmetic, if it is right. That is belaboring the point. Relative heights are shown there and counsel can draw whatever conclusions they wish.

[fol. 1407] Mr. Rockwood: If they were in evidence,—the profiles—

Mr. Maguire: The heights are in there, and you can make your own calculations.

By Mr. Golden:

Q. What is the distance on the Milwaukee between Minnesota Transfer and Spokane, as compared with the Great Northern distance?

A. The Milwaukee is 1,469 miles; the Great Northern is 1,454 miles; and the Northern Pacific is 1,496 miles.

Mr. Golden: I have no further questions.

Exam. Dishman: Any other questions on cross examination?

(No response.)

Exam. Dishman: Or redirect?

Mr. Maguire: Just one question.

Redirect examination.

By Mr. Maguire:

Q. What is the ranges of the heights and widths of box cars, Mr. Crippen, above the rail?

Mr. Rockwood: Do you mean of Milwaukee ownership or all box cars in the United States?

Mr. Maguire: I am talking of box cars; Milwaukee box cars are no different from any other box cars.

Mr. Rockwood: Is that evidence?

Mr. Maguire: No; certainly not.

A. The range is probably between 13 feet 6 inches and 15 feet 4 inches on height, and the width is from about 8 feet 10 inches to about 10 feet 8 inches, in width.

[fol. 1408] By Mr. Maguire:

Q. During the time you have been operating on this railroad, have you ever had any difficulty in running any box cars of unusual height and width, other than box cars over the route of the Milwaukee between the Twin Cities and the interchange at Spokane?

A. No, sir.

Mr. Maguire: That is all I have.

Recross examination.

By Mr. Rockwood:

Q. The figures you give for box car sizes were read by you out of some publication relating to Milwaukee equipment, isn't that correct?

A. Yes.

Mr. Maguire: Does the Milwaukee own the same general range of sizes in box cars as are generally prevalent throughout the country?

The Witness: Yes.

Exam. Dishman: Is that all?

Mr. Maguire: That is all.

Mr. Rockwood: That is all.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: We will have a short recess.

(Short recess.)

[fol. 1409] Exam. Dishman: The hearing will come to order.

J. J. O'Toole was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. State your name.

A. J. J. O'Toole.

Q. Where do you live?

A. Oak Park, Illinois.

Q. And where are your offices?

A. In the Union Station, Chicago, Illinois.

Q. What is your occupation?

A. General manager of lines east of the Missouri River.

Q. On what railroad?

A. Chicago, Milwaukee, St. Paul and Pacific.

Q. How long have you been in the operating department as an officer of the Milwaukee Road?

A. 18 years.

Q. And has all of your service been spent on lines east of Mobridge?

A. That is right.

Q. What is the distance from the Twin Cities to Mobridge, South Dakota, via the Milwaukee Road?

A. 382.4 miles; that is from South Minneapolis to Mobridge.

Q. Do you have in operation over any portion of that line CTC?

A. For 147 miles.

[fol. 1410] Q. What does CTC stand for?

A. Centralized Traffic Control.

Q. And what is the signal equipment on the remainder of the line?

A. Automatic block signal.

Q. Do you have available the tonnage carried by the Milwaukee Railroad, that is, freight tonnage carried by the Milwaukee Railroad in 1953, as compared to any former years?

A. I do.

Q. And what was the year of heaviest tonnage so far as our railroad is concerned?

A. From Minneapolis to the Coast, the year of 1943 was the heaviest.

Q. And how many freight gross ton miles were carried during that year?

A. 14,559,747, with three ciphers omitted.

Mr. Rockwood: Is that ton miles?

The Witness: Thousand ton miles.

By Mr. Maguire:

Q. Gross ton miles?

A. That is right.

Q. How many thousands of freight gross ton miles were handled over the same territory in 1953?

A. 11,439,631.

Q. Have you computed any percentage relationship between the two, what percentage one finds 1943 was of 1953?

[fol. 1411] A. 127.27 percent.

Q. Do you have any comparison of the motive power of the Milwaukee Railway for those same years?

A. Well, I have the motive power as of September 30, 1954, which was 60,741,353 pounds and September 30, 1943 was 60,495,467 pounds.

Q. When you say pounds, what do you mean?

A. Starting tractive effort.

Q. Is that a standard unit of comparison?

A. That is the way we report it to the Commission.

Q. And what is the relative figure on diesel ownership and percentage of diesel, steam, and electric in train miles as between 1943 and 1953 or 1954, as the case may be?

A. In 1943 the gross ton miles in the railroad as a whole, 86.7 steam; 6.5 diesel; and 6.8 electric. In 1954, as of September 30, 7.7 steam; 84.7 diesel; 7.6 electric.

Q. Has the Milwaukee Road on order any additional diesel locomotives which will be delivered during the present calendar year?

A. We have on order 74 of them that will be delivered before December 31.

Q. And after December 31 or after the delivery is completed, what will be the percentage of dieselization on that portion of the line which is not covered by electrical operation?

A. 100 percent.

[fol. 1412] Q. How many diesel units did the company own and operate during the year 1943?

A. As of December 31, 1943 we owned four passenger units, 8 freight units, 63 switch engines, and of those 63 there were 10 380 horsepower.

Q. And that makes 75 units, altogether?

A. Yes.

Q. And what are we owning and operating as of the present date?

A. As of October 31, 1954 we owned 82 passenger units, 194 road freight units, 169 road switchers, 238 switch engines, including 8 380 horsepower engines and two 1000 horsepower motor cars.

Q. Are road switchers used for hauling in line haul operation?

A. Yes.

Q. Now, will you describe the physical operations involved in interchange at Minnesota Transfer, or at the Twin Cities; let us first take eastbound traffic, and tell us the operations involved in interchange between the Northern Pacific and the Great Northern, and the Milwaukee

Road; also between the Milwaukee Road and other lines who receive cars for further line haul movement in an eastbound direction at Minnesota Transfer?

A. The Northern Pacific delivers to the Milwaukee through Minnesota Transfer.

Q. What is the Minnesota Transfer railway?

A. The Minnesota Transfer is a switching line that per-
[fol. 1413] forms industrial switching and intermediate switching between Western Trunk Line carriers, and the Western lines. It consists of 13 miles of main line, 150 miles of trackage.

They have 18 diesel locomotives and one steam engine.

Q. Will you go ahead then with your description of the physical method?

A. I stated that the Northern Pacific delivered to the Milwaukee via Minnesota Transfer; they bring their cars from Northtown to Park Junction; Minnesota Transfer engines then haul the cars from Park Junction into the P yard, where they are classified; immediately joining the P yard is the C yard and the five westerly tracks in the C yard are connected up with the P yard leads.

The cars that are switched from the University Avenue in and the Milwaukee cars go in to the tracks described; that is, the five northerly tracks and the Milwaukee transfers take these cars from the P yard to what is known as our new yard at St. Paul.

Mr. Rockwood: Are they moved from the P yard to the C yard?

The Witness: No, they are switched directly into the C yard. There are 5 northerly tracks connected up with the P yard rails.

Mr. Rockwood: And the Milwaukee goes then where?

The Witness: To the new yard at St. Paul.

Mr. Rockwood: Powers Avenue?

[fol. 1414] The Witness: Powers Avenue.

Mr. Hillman: Minnesota Transfer shifts them right—

The Witness: The five northerly tracks are connected up with the P yard.

By Mr. Maguire:

Q. It might be well here to get a brief description of the principal train yards of Minnesota Transfer so that it will be more intelligible.

A. The A yard consists of 42 tracks and it holds 1498 cars and there is a classification yard for westbound business; the B yard consists of 7 tracks holding 127 cars and it is a yard where outbound Omaha cars are lined up,—by Omaha, I mean the Chicago and North Western; the C yard is 27 tracks, holding 1033 cars, and is used as a receiving yard for westbound business.

The F yard consists of 6 tracks, 355 cars and the Omaha deliveries to the Minnesota Transfer are made in this yard; the P yard consists of 24 tracks, holding 1113 cars, and is an eastbound classification and receiving yard. The J yard consists of 7 tracks, holding 308 cars, and is an industrial yard.

Q. Are all of these yards adjacent to each other?

A. That is correct.

Q. Now, let us see how far had you gotten?

A. I got the Northern Pacific down to the St. Paul yard.

Q. How about the Great Northern?

[fol. 1415] A. The Great Northern makes their delivery into the P yard and the Minnesota Transfer classifies them similarly to the way they classify the ones just described, and we haul them from the P yard to the St. Paul yard.

Q. When the Northern Pacific and Great Northern bring them into the P yard, are they only Milwaukee carriers or for other carriers?

A. Others. The Northern Pacific don't bring them into the P yard; they leave them at Park Junction.

Mr. Hillman: Excuse me; I think Mr. Maguire's confusion is understandable, typical of the confusion we will all have on cross examination and in the absence of a map I don't see how we can be expected to ask any questions of the witness.

Mr. Maguire: Is that a question or what?

Mr. Hillman: I was suggesting we would have difficulty in cross examination and I was wondering whether you are going to submit a map.

Mr. Maguire: No: I have no map.

Exam. Dishman: Would you suggest the witness go a little slower? Would that help?

Mr. Torinus: Did you say the Great Northern delivered cars for the Milwaukee at P yard?

The Witness: In P yard.

Mr. Torinus: Whereas the Northern Pacific takes it into Park Junction and then they are handled by the Min-
[fol. 1416] nesota Transfer from Park Junction to P yard?

The Witness: That is right.

By Mr. Maguire:

Q. I believe you stated that these deliveries by the Northern Pacific and the Great Northern to the Minnesota Transfer Railway is not restricted to Milwaukee but is also used for interchange with cars for other railroads?

A. That is right.

Mr. Rockwood: You don't mean all of the railroads, but some of the railroads?

The Witness: That is right.

By Mr. Maguire:

Q. Let us get the exception on that?

A. The Great Northern and Northern Pacific interchange direct with the Burlington and I understand they have two other direct interchanges but I am not familiar enough with it to testify to it.

Q. Can you leave it this way: Cars for which railroads are delivered over to the Minnesota Transfer by the Northern Pacific and Great Northern?

A. Milwaukee, Rock Island, Great Western, and the Omaha.

Mr. Hillman: By Omaha you mean both lines of the Northwestern System,—the North West and the C.M. & O.?

The Witness: I don't know about the Omaha. We always call the North Western the Omaha in the Twin Cities. It is the east business, for the business going east going to Wyeville.

Mr. Hillman: You are not certain whether that includes [fol. 1417] interchange on the Chicago and North Western Railway Company Lines as well as the Chicago, St. Paul, Minneapolis and Omaha Railroad.

The Witness: I don't think the North Western operates into St. Paul; it is all Omaha.

Mr. Hillman: As a matter of fact Wyeville is a junction point as I understand it now for the North Western and the Omaha.

The Witness: My understanding has been, I may be incorrect, that all of the operations in the Twin Cities is Omaha, and that the C. & N.W. as such did not operate into the Twin Cities.

Mr. Hillman: Then as I understand you this is traffic which is destined for destinations both on the lines of the North Western itself and on the lines of its subsidiary, the Omaha.

The Witness: Well, let us put it this way: We will say the train left St. Paul as an Omaha train and when it got to Wyeville it would have a C. & N.W. train when it got to Chicago.

By Mr. Maguire:

Q. The C. & N.W. traffic, as well as the Omaha traffic, is interchanged?

A. Yes.

Q. Had you described on eastbound business through the Transfer where the Milwaukee delivers its traffic to the Transfer line, coming into the Twin Cities from the west, eastbound?

A. The traffic arrives in Milwaukee Road trains at South Minneapolis yard and is delivered by transfers to the C [fol. 1418] yard of the Minnesota Transfer.

Mr. Torinus: By the Milwaukee.

The Witness: By Milwaukee switch engines, that is correct.

By Mr. Maguire:

Q. Now, on westbound business through the Transfer or through the Twin Cities, what is the physical manner of

interchange westbound between the so-called Western Trunk Lines, that is, the lines carrying up to the Twin Cities and the Great Northern and Northern Pacific; how is that affected, including the Milwaukee as one of the trunk lines?

A. The Burlington delivers direct; the Milwaukee westbound trains carrying its traffic stop at St. Paul Yard, and set out St. Paul business and Minnesota Transfer business. A switch engine then takes the Minnesota Transfer business and delivers it to the C yard of the Minnesota Transfer Railway. It is then switched by the Minnesota Transfer Railroad in the A yard and lined up for westbound movement.

The Minnesota Transfer Railroad delivers the Northern Pacific business to Park Junction and Great Northern takes its own business out of Minnesota Transfers to its train yard.

Mr. Rockwood: You say the Great Northern takes its own business with its own power.

The Witness: That is correct.

Mr. Torinus: That would be out of the A yard.

The Witness: That would be out of the A yard.

By Mr. Maguire:

Q. And as to the other companies you mentioned, the [fol. 1419] Great Western, the Omaha acting for itself and for the North Western, and the other lines whom you mentioned as receiving their cars in interchange on the eastbound track in the Minnesota Transfer yards, do those same companies deliver their westbound cars into the Minnesota Transfer yard for westbound movement?

A. Well, there is an exception to that. The Rock Island which is a Milwaukee tenant, delivers part of its business at South Minneapolis and part of it through Minnesota Transfer when it is routed via Minnesota Transfer.

The Minneapolis and St. Louis, the lion's share of our business to them is delivered through Minnesota Transfer, but there is some small amount that is delivered to them at Minneapolis via the Railway Transfer.

Mr. Rockwood: Let us get that straight; the Railway Transfer is owned by whom?

The Witness: By the St. Louis, the M. & St. L.

By Mr. Maguire:

Q. Are you generally familiar with the manner in which other Western Trunk Lines interchange at or near Minnesota Transfer with the Milwaukee; is there any difference between that and what you have already described?

Mr. Torinus: I thought I was talking about the Milwaukee.

Mr. Maguire: No, their interchange with the Northern Pacific. I did get a question mixed in.

Mr. Torinus: Didn't you just get finished with an inter-
[fol. 1420] change between the Western Trunk Lines at Milwaukee on Western Trunk Lines and some other road?

The Witness: We described the Rock Island as a Western Trunk Line and was an exception, that interchanged direct with us and M. & St. L., a Western Trunk Line; we delivered most of our business through Minnesota Transfer and a slight amount of it through the Railway Transfer.

By Mr. Maguire:

Q. How does the Milwaukee interchange with the Burlington Lines at the Transfer?

A. Through Minnesota Transfer.

Q. And with the main exception of the interchange between the Northern Pacific, Great Northern, and the Burlington, is there any material physical difference in the manners of interchange on westbound business between cars handed to the Milwaukee as a trans-continental carrier and those handled to the Great Northern and the Northern Pacific as a trans-continental carrier?

A. I would think not.

Q. And how about your eastbound business, is it subject to the same conditions?

A. The same thing.

Q. Now, there is one phase of the operation through the Twin Cities I have not touched upon and when a car moves in either direction through the Twin Cities via the Milwaukee Road, how is that car handled?

A. Well, we will take eastbound first as an example. No. [fol. 1421] 264, which is our main time freight from the west is blocked at Miles City, Montana. The train is separated as between Minneapolis cars, Chicago cars, Minnesota Transfer cars, and St. Paul Milwaukee shorts. On arrival at South Minneapolis a switch engine takes the Minnesota Transfer block to Minnesota Transfer; a road crew starting its assignment at South Minneapolis, takes the Chicagos and heads for La Crosse; they stop intermediate in St. Paul to pick up any Chicago loads that may have originated at St. Paul, such as those brought down from Minnesota Transfer.

Q. Did you cover that both ways?

A. No, I didn't cover it westbound. In the westbound direction No. 263 which is the Chicago-Tacoma time freight is blocked as follows: Minneapolis—

Q. Where do you block that train?

A. In the Bensenville yard, Chicago outer yard. Minneapolis and beyond, St. Paul, Minnesota Transfer. On arrival at St. Paul yard, a switch engine takes the Minnesota Transfer block to Minnesota Transfer immediately on arrival; the St. Paul cars are set out at St. Paul and the Minneapolis and beyond cars are moved into Minneapolis. There the train is broken up and blocked by certain junctions and destinations west of Aberdeen.

Q. Do your through cars, however, leave 263 and 264 as the case may be, depending upon the direction, your [fol. 1422] bridge traffic through the Twin Cities?

A. They do not leave 263 or 264, that is, the Chicago cars do not but the shorts leave 263 at Minneapolis.

Q. Where they are carried by other trains to destination?

A. Yes.

Q. Now, since the heavy peak year of traffic in 1943, have the facilities of the Milwaukee Road been reduced?

A. No, I would say they were increased.

Q. And can you call attention to any improvements or expansions of facilities since 1943?

A. Last November, at Bensenville, we completed a 70-track hump classification yard with automatic switching

and push-button speed control; two years ago we did the same thing with the Airline yard in Milwaukee, and in 1947 we completed an extension, the so-called Pig's Eye or new yard at St. Paul. All of this work cost about $9,000,000.

Q. Can you give a brief description; I may hand you here Exhibit 9, of the lines which are either crossing or branching off from our line between Minneapolis and Spokane and east of Mobridge?

A. At Roscoe, South Dakota, we have a branch line running north connecting with the Northern Pacific at Linton. Running south from Roscoe is a branch that ends up at Orient, connecting with no other railroad.

At Aberdeen we have a north and south line extending [fol. 1423] northerly from Aberdeen to Edgely, with a connection with the Northern Pacific and the Midland Continental and southerly out of Aberdeen we have a line through Woonsocket, Mitchell, Yankton, Sioux City, Manilla, Omaha, and into Des Moines.

East of Aberdeen we have a branch running north to Brampton that connects with no one. We have a branch running south from Bristol through Madison, South Dakota, Egan, Sioux Falls and into Sioux City via Canton.

At Milbank we have a branch that runs to Sisseton; the next branch line is a line running north from Ortonville to Fargo, connecting with the Northern Pacific and Great Northern at Fargo. East of that there is a branch that runs from Glencoe to Hutchison.

Q. And does the Milwaukee maintain regular service over the branches in connection with their trans-continental operation?

A. We have daily service from Aberdeen to Sioux City into Manilla and Des Moines and east. We have twice-a-week service from Bristol to Madison and additional service as required between Madison and Sioux City; via Sioux Falls and Canton we have six-day-a-week service.

Q. How about your Fargo line?

A. I believe that is tri-weekly now.

Q. Do you give additional service to meet business requirements?

A. That is right.

Q. Go back to your little branch running down from [fol. 1424] Roscoe to Orient. Do we have an interchange with any other railroad at Faulkton?

A. We have a connection with the North Western at Faulkton.

Mr. Maguire: You may cross examine.

Mr. Rockwood: Mr. Examiner, I can assure you that we can finish with this witness tomorrow morning and probably well before noon. This witness has covered several subjects and I, personally, would like to discuss his testimony with the operating employes of the Great Northern and Northern Pacific before I attempt to cross examine. If I may, I would like to defer cross examination until 9:30 tomorrow morning.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. We will adjourn until tomorrow at 9:30.

(Whereupon, at 4:25 o'clock p.m., Friday, November 12, 1954, the hearing in the above-entitled matter was adjourned to Saturday, November 13, 1954, at 9:30 o'clock a.m.)

[fol. 1427]

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Exam. Dishman: The hearing will be resumed, please.

Mr. Maguire: There are a couple of questions, Mr. Examiner, which I overlooked asking Mr. O'Toole yesterday, which I would like to ask at this time.

Exam. Dishman: All right.

J. J. O'Toole resumed his testimony as follows:

Direct examination.

By Mr. Maguire (Continued):

Q. Mr. O'Toole, in your testimony yesterday as to connections with other lines, no mention was made of any

connection, or certain other connections at Aberdeen, South Dakota. Will you complete your testimony on that, please?

A. At Aberdeen, we have a connection with the Chicago and North Western that extends northerly towards Oakes, and southerly throughout South Dakota, and into Iowa, Sioux City, Omaha and Des Moines.

Q. And, are there any sources of centralized traffic control within the Twin Cities area on the Milwaukee Railroad?

A. Yes, from Chestnut Street to South Minneapolis.

Q. With reference to the operations that you described through the Twin Cities, where would that be, and what traffic would be handled over or in those operations?

A. Roughly, about three-eighths of a mile west of the St. Paul Union Depot to 1.9 miles east of the Minneapolis pas- [fol. 1428] senger station.

Q. Does freight move over that line?

A. Both passenger and freight trains of the Milwaukee, passenger trains of the Soo Line and transfers, and passenger trains of the Rock Island move over that railroad.

Q. Yes. And, from your observation and knowledge of centralized traffic control, what effect does the installation of that system have upon the flexibility of movement?

A. It speeds up the operation, in that during periods of the day when passenger trains are running closely together, you are able to move your freight trains on the opposite track.

Mr. Maguire: You may cross-examine.

Cross examination.

By Mr. Rockwood:

Q. Mr. O'Toole, you gave some figures for tonnage in 1943 and 1953 between the Twin Cities and the Coast. Just what trackage of the Milwaukee was included in your computation of those figures?

A. It included all of the main track and the branches, on the H. & D., the Trans-Missouri, Rocky Mountain, Idaho and the Coast.

Mr. Maguire: Just a moment. What is the H. & D. for the record, Mr. O'Toole?

The Witness: The Hastings and Dakota Division.

Mr. Maguire: All right.

By Mr. Rockwood:

Q. Well, west of Mobridge, for instance, does it include all trackage west of Mobridge?

[fol. 1429] A. Yes, sir, it does.

Q. Including all branch lines west of Mobridge?

A. That is right.

Q. Back between the Twin Cities and Mobridge, it includes, of course, the main line from Minneapolis and St. Paul through Ortonville, and on through Aberdeen to Mobridge?

A. That is correct.

Q. What branch lines does it include?

A. From Mitchell to Aberdeen; Glencoe to Hutchinson; Ortonville to Fargo; Milbank to Sisseton, and over to Harlem; Aberdeen to Edgeley; Roscoe to Orient. I think that about does it.

Q. Do you have with you for the year 1953 the gross ton miles for your system?

A. Yes, sir.

Q. What was that?

Mr. Maguire: To be clear about this, is this gross ton miles?

Mr. Rockwood: I want the figures corresponding to those that he gave yesterday.

Mr. Maguire: That would be freight gross ton miles.

The Witness: 17,067,208.

By Mr. Rockwood:

Q. Do you have the 1943 figure corresponding with that?

A. We will have to compute it by multiplying the system freight train miles by the gross tons per train.

[fol. 1430] Q. Would that take very long?

A. No. I can do it in a very few minutes.

Q. Will you do that for me, please?

A. Yes, sir. Will you give me first, for the record—First, will you state the two factors that you are using in the arithmetical process?

A. 19,021,207 train miles multiplied by 2,196 gross tons per train. If I have made no errors in my multiplication, it is—

Q. Just a minute. I want to get that. 19,021,207?

A. Yes, sir. 41,770,570, and there are three ciphers.

Mr. Maguire: Added at the end?

The Witness: Actually it is 572.

By Mr. Rockwood:

Q. That gives us 41,000,000,000 roughly in 1943; 17,000,000,000, roughly, in 1953. In other words, your 1943 business was about two and a half times what your 1953 business was for the system expressed as freight gross ton miles?

A. I will check this figure again.

Mr. Maguire: I think, Mr. Examiner, the figures will speak for themselves on that.

Mr. Rockwood: As a matter of fact, I question whether the seventeen billion figure is correct. I think it is in error. I think it is over thirty billion.

The Witness: I think you are right. I have got a correction on it. For 1953, 36,730,753.

By Mr. Rockwood:

Q. Just a second. What is that again?

[fol. 1431] A. 36,730,753; three ciphers omitted.

Q. And if you express that—

Mr. Maguire: Pardon the interruption. May I get the last digits there?

The Witness: 36,730,753—763, make it. I see an error in addition.

By Mr. Rockwood:

Q. And if you express that 1943 figure that you gave us of 41,770,000 as a percentage of the 1953 figure of 36,730,753, it produces a percentage of about 116 per cent, does it not?

A. I would say so.

Q. That can be verified, of course. So that the fact is that your business on your line, Minneapolis to the Coast,

fell off relatively more between 1943 and 1953 than did your system business?

A. That is right.

Q. Now, in 1943, that was the peak year of the war traffic to the Coast, was it not?

A. That is right.

Q. And, of course, as everyone knows, there was a tremendous volume of business handled by all lines, all transcontinental carriers, to the Coast as an incidence of the war in the Pacific?

A. That is right.

Q. And the intense building activities of war facilities and war materials on the West Coast?

[fol. 1432] A. That is correct.

Q. If you should eliminate that business from Minneapolis to the Coast from the total system business, then the fall-off in your business generally would, of course, be less than 116 per cent for the balance of the system?

A. That is right.

Q. I want to ask a few questions about your own operation through Minneapolis and St. Paul.

A. All right.

Q. No. 264, you say, is your time freight from the west to and through the Twin Cities to Chicago?

A. That is right.

Q. Coming into Minneapolis, that train passes over a depressed track, without grade crossings, for some distance before it reaches your South Minneapolis Yard?

A. That is right.

Q. How long is that stretch of depressed track, or of the grades where the grades are separated from the streets? These do not have to be precise?

A. Oh, I would say, roughly, three miles. It extends from Cedar Street over to Hennepin Avenue.

Q. Hennepin Avenue in Minneapolis?

A. That is right.

Q. And beyond Hennepin Street in Minneapolis, you still have some grade separations, do you not, because it is [fol. 1433] above grade going through Marion Parkway, and it is above grade at Highway 100?

A. That is right.

Q. You are fairly well separated as to the grades west of your South Town Yard?

A. I believe there are four grade crossings.

Q. When you come into the South Town Yard—is that what you call the South Town Yard?

A. South Town and South Minneapolis. We use the names synonymously.

Q. That is located at about South 29th Street, in Minneapolis, is it not, near Cedar Avenue?

A. That is right.

Q. And is how far south of your passenger station?

A. 1.9 miles.

Q. The freight trains, of course, do not go up on what is a "Y", to serve the passenger station, do they?

A. I don't follow you.

Q. Your freight business does not go on any trackage north of your South Town Yard up toward the passenger depot, except to serve local industries?

A. We have freight business that goes from South Minneapolis to the upper yard, where we interchange with the Minneapolis Eastern and railway transfer in the upper yard on switch business.

[fol. 1434] Q. But No. 264 doesn't go into that territory?

A. We use it for head room.

Q. Now, is the crew changed on No. 264 at South Town Yard in Minneapolis?

A. That is correct. They are assigned on 263 and 264 from South Minneapolis to LaCrosse.

Q. Does the crew that handles the train on beyond St. Paul towards Chicago handle the train south of the South Town Yard?

A. That is right.

Q. So that the business of 264 is not handled by your transfer service between South Town in Minneapolis and Pig Eye in St. Paul?

A. When we say the business of it, let us qualify it this way: As I described yesterday, short cars between St. Paul and the Milwaukee, they do not leave St. Paul on 264, and a Minneapolis yard crew transfers intermediate cars from St. Paul to the Milwaukee and down to the Dubuque Division with yard crews because under schedules rules

we can not haul any cars in a train from Minneapolis to St. Paul that the road crew does not take out of St. Paul.

Q. And are those cars so handled by the transfer crew put into a train at Pig Eye in St. Paul?

A. That is right.

Q. Out of the South Town Yard in Minneapolis to a point at least as far east as the Union Station in St. Paul, is your [fol. 1435] road a double track road?

A. That is right.

Q. Only two tracks?

A. We have three tracks from what we call Signal Tower to Minneapolis Transfer.

Q. How long a stretch is that?

A. Oh, I would judge about one and a quarter miles.

Q. How far is it from the South Town Yard in Minneapolis to the Union Station in St. Paul; can you tell us, roughly?

A. About nine miles.

Q. Now, on that track between the St. Paul Union Station or Depot, passenger depot, and South Yard, how many passenger trains a day use that track?

A. Do you want west first, or east?

Q. For whichever direction you want to give first. I want them in both directions.

A. All right. It is fourteen, west; fourteen, east.

Q. That includes five Milwaukee trains, four Rock Island trains, and five Soo Line trains, does it, in each direction?

A. Four Rock Islands.

Q. Yes.

A. I count four Soo Lines.

Q. Four Soo Lines?

A. Yes.

Q. That leaves six Milwaukee to make up your fourteen?

[fol. 1436] A. Six Milwaukee.

Q. Thank you. What is the maximum grade westbound out of the Union Station in St. Paul?

A. What grade?

Q. To Minnesota Transfer? What is the maximum grade that you reach between the two cities?

A. 1.25.

Q. Can you tell us—I know this isn't a precise figure, but can you tell us how many freight trains use that track between the St. Paul Union Depot and South Yard on a normal day?

A. You are talking about road trains or transfer cars or what?

Q. All freight traffic, whether transfer trains or road trains, or what have you?

A. I would say, to and include Minnesota Transfer, as intermediate, counting those that you would have, somewhere—depending on business conditions—from nine to eleven Milwaukee trains and probably four to five Rock Island trains.

Q. In each direction, or does that include both east and west?

A. That is round trip.

Q. All right.

A. Let me see. Just a minute.

Q. How many Milwaukee—

Mr. Maguire: Let him finish his computation there.

Mr. Rockwood: Yes.

By Mr. Rockwood:

Q. Do you have that?

[fol. 1437] A. On the Milwaukee, that would be in each direction.

Q. How many Milwaukee trains in each direction?

A. About nine.

Q. So that would be eighteen Milwaukees both directions?

A. That is right.

Q. And, how many others?

A. Rock Island, I would say about four in each direction.

Q. That would be eight altogether?

A. Yes.

Q. The Soo Line does not use that line for freight service, does it?

A. No.

Q. Now, going up the hill on this 1.25 grade out of St. Paul westbound, does that require helper service on any of the trains?

A. Occasionally it requires helper service. We are using over the hill on the through trains 5400 and 4500 horse power Diesels. On the transfers we are using 3200 horse power multiple unit transfer engines. On the heavy transfers, we also have a multiple unit, 1,000, which gives us 2,000 horse power on transfers. For pretty close to a year preceding last spring, we didn't work three helper engines a month on that hill, but recently we took the diesels out of the terminal to outlying points to close up the roundhouses, and we put steam back in the terminals, and we have had helper service, and I think today we are running about three helpers in a twenty-four hour period on short line hauls.

[fol. 1438] Q. So far as centralized traffic control is concerned, a helper engine coming back is the same as a freight train, is it not?

A. That is right.

Q. So that the helper engine, of course, going up the hill is a part of the train which it is assisting in moving?

A. That is right.

Q. But in coming back it is the same as a freight train?

A. That is right.

Q. So that you have about three additional helper trips a day?

A. Not to exceed that.

Q. With 28 passengers, 26 freights, as you gave them, and three helpers, that would be fifty-four trains a day over that line?

A. Yes, sir.

Q. Is there any period of the day when that line— Is there any peak period of use during the day or is it pretty well spread through the twenty-four hours?

A. No, there is a peak haul in the morning from about seven fifteen to eight thirty.

Q. Is that because of the concentration of passenger service?

A. That is correct.

Q. And I suppose you try to keep freights off the line during that peak period of passenger use?

A. We can operate freight trains that are light; I mean, light freight trains such as a short transfer going to Minnesota Transfer. I might state that it takes approximately [fol. 1439] twenty-two minutes to go from Chestnut Street to Marion Park with a seventy-five car freight train and multiple diesel engine.

Q. That is at the top of the hill? That is, Marion Park?

A. That is right.

Q. And Chestnut Street is at the bottom of the hill?

A. That is right.

Q. Other than the roads that we have mentioned,—the Soo Line, the Rock Island and the Milwaukee, are there any other roads that use these tracks that we have been describing between South Town Yard and Minneapolis and Pig Eye in St. Paul, south of the passenger terminals?

A. South of the passenger terminal in St. Paul?

Q. Yes, through the passenger terminal or in the vicinity of the passenger terminal. Specifically, does the Great Western, out of South St. Paul, that is, the town of South St. Paul, on the west side of the Mississippi River, does it use those tracks, or any portion of the track?

A. No, sir. The Great Western crosses our two freight mains at Robert Street, and enters the Union Depot Company track? The Great Western, while it has a bridge over the Mississippi River at Hoffman Avenue, uses those tracks from, roughly, Robert Street to Hoffman Avenue temporarily on a detour basis, but that is not the passenger mains.

Q. The crossing of the Great Western over these tracks that you referred to, is that on the same grade as your tracks, or is it overhead?

[fol. 1440] A. Same grade.

Q. Same grade?

A. Yes, sir.

Q. Is there an interlocker there?

A. No.

Q. Is there an interlock at Hoffman Avenue?

A. Yes, sir.

Q. Coming out of the South Town Yard in Minneapolis, and moving eastbound toward the Mississippi River, are you above or below, or on the grade of the adjacent streets, or the streets which cross your right-of-way?

A. From South Minneapolis, I would say to 29th Avenue south we cross the streets at grade. We cross the parkway adjoining the river, Mississippi River, on the west side and on the east side overhead.

Q. 29th Avenue?

A. That is right.

Q. 29th Avenue south is close to the Mississippi River, is it, at that point?

A. Yes.

Q. How far is it from the boulevard paralleling the river, about?

A. Oh, approximately one mile.

Q. In that distance from South Yard to 29th Avenue south, how many grade crossings do you have?

A. Six.

[fol. 1441] Q. Six?

A. Yes, sir.

Q. In that area in South Minneapolis, between your South Yard and the Mississippi River, 29th Avenue, the street you gave, do you pass through an industrial area, or is it residential?

A. On the— Let me get my compass directions straight. On the righthand side of the track as you go east—

Q. That is the south side of the tracks?

A. Yes.

Q. All right.

A. (Continuing) —it is largely industrial, and on the left-hand side as you go east to about 28th Avenue South, it is industrial south, and from there east it is residential.

Q. Yes. Are there any city ordinances in Minneapolis restricting your speed eastbound out of South Yard to the Mississippi River?

A. If there are, I have never heard of them.

Q. As a practical matter, do you limit the speed of your trains in that area over these grade crossings?

A. Over these grade crossings, leaving South Yard, we have a yard limit rule, and that is in this territory, which requires freight trains and transfers to run at a restricted speed.

Q. What is the speed which you permit there?

A. Oh, I would say we would consider eighteen to twenty miles an hour reasonable.

Q. Is there any restriction on passenger train speeds?

[fol. 1442] A. Not that I ever heard of.

Q. What is the yard limit east of your South Town Yard?

A. The yard limit extends from South Town Yard to Newport.

Q. Newport which is beyond, or south of St. Paul?

A. That is right.

Q. So your yard limit extends all the way from the South Town Yard, all through what you serve east of that in Minneapolis, and all of St. Paul, beyond Pig Eye, to Newport, south of St. Paul?

A. South or east. I call it east.

Q. It is going down the river; downstream, following the river, the Mississippi River?

A. That is right.

Mr. Rockwood: That is all I want to ask.

Exam. Dishman: Mr. Torinus?

Mr. Torinus: I have no questions.

Exam. Dishman: Any further questions on cross?

Mr. Golden: I have a few questions.

By Mr. Golden:

Q. You may have answered this, or it may have been asked, I am not sure. Did you give the gross ton miles per train for 1953 west of St. Paul?

A. I didn't give the gross tons per train.

Mr. Maguire: Was your question gross ton miles per train?

Mr. Golden: It should be gross tons per train.

The Witness: No, I did not. In fact, I didn't give it any-

[fol. 1443] where except to arrive at the computation for the system for 1943.

Q. Do you have that figure for 1953 for west of the Twin Cities?

A. It will have to be by divisions. I have no totals on it.

Q. All right.

A. The H. & D. Division—I gave that once before. The gross tons per train you want; is that right?

Q. That is right.

Mr. Maguire: This is 1953 that you are asking for?

Mr. Golden: That is right.

The Witness: On the H. & D. Division, for the year 1953, 2903 tons.

By Mr. Golden:

Q. Yes.

A. For the Trans-Missouri—

Exam. Dishman: Where is that division?

The Witness: It extends from Minneapolis to Mobridge, South Dakota.

Exam. Dishman: All right.

The Witness: The Trans-Missouri, from Mobridge to Harlowton, Montana, 4087 tons.

Mr. Maguire: That figure again, please?

The Witness: 4087 tons. For the Rocky Mountain Division east, or, rather, extending from Harlowton, Montana, to Avery, Idaho, 3042 tons.

By Mr. Golden:

Q. All right.

A. For the Idaho Division, extending from Avery, Idaho, [fol. 1444] to Othello, Washington, 2802 tons.

Q. All right.

A. For the Coast Division, extending from Othello, Washington, to Tacoma, 2490 tons.

Q. On this section of track between the Pig Eye Yard and the South Town Yard in Minneapolis, are there also switches for the purpose of making industrial switches?

A. There is one industry on the eastbound track at Chestnut Street, St. Paul, the Industrial Grease and Drum Company. At Marion Park, there are a lot of industries but none of them connect directly with the main track. We have a third track out of which these industrial spurs lead, except for a freight house at Marion Park that connects with

our extra track, and a small team track at Cleveland Avenue. Otherwise, there are no industrial tracks off the main tracks.

Q. Would you also use those tracks for going to industries beyond, either in St. Paul or Minnesota Transfer?

A. I don't follow you.

Q. In other words, do you have traffic which originates in St. Paul, which is taken to industries, say, in Minneapolis, beyond your South Town Yard?

A. We have industries and elevators down in what we call the I. & M. District. That is South Lake Street to 45th Street, on a line from South Minneapolis to Mendota, and there are also industries out in the depression between [fol. 1445] Hennepin Avenue and Cedar Avenue.

Mr. Rockwood: When you refer to "depression" you mean your own depressed tracks along 29th?

The Witness: That is right.

By Mr. Golden:

Q. What I had in mind, sir, you don't use through train service for the purpose of your Twin City switching, do you?

A. No, sir.

Q. You do have additional trains on these tracks for the purpose of your over-all Twin City switching?

A. When he asked me the question on trains, I counted the transfers that operated intermediate from Roberts Street to Minnesota Transfer, as well as the transfers and road trains that operated from St. Paul, or Roberts Street, to Minneapolis. The switch engine that switches in the McAllister District starts its assignment in the McAllister District, and ties up there, so he doesn't get out on the main line except to switch to the Marion Park freight house.

Mr. Golden: That is all I have.

Mr. Torinus: Just one question along that line.

By Mr. Torinus:

Q. Does the Milwaukee serve the Municipal Barge Terminal at St. Paul?

A. No, the Great Western does.

Q. Does the Great Western get to the Barge Terminal at St. Paul by crossing over any of your tracks?

[fol. 1446] A. When they had their bridge in service. They have an independent lead they use for head room so that they can come up from Hoffman Avenue up on the lead and back into the Barge Terminal without getting into our tracks.

Q. At the present time the fact is that the Barge Terminal served by the Great Western does not involve the crossing of your main line?

A. No.

Q. Does it involve the use of any of your tracks?

A. As I explained before, the Great Western are now detouring over our railroad from Roberts Street to Hoffman Avenue, and the switch engine that brings down the crew for interchange with various lines at Hoffman Avenue some times does the Barge Terminal work.

Q. I see. And that is between the Union Depot and Pig Eye?

A. That is right.

Mr. Torinus: That is all.

Mr. Rockwood: Just so that I can get myself straight on this:

By Mr. Rockwood:

Q. Is Hoffman Avenue east of Roberts Street?

A. Oh, yes. It is east of Division Street.

Q. It is east of the passenger terminal?

A. Yes, sir.

Q. And the Hoffman Avenue crossing that you referred to is between the passenger terminal and Pig Eye?

[fol. 1447] A. The Hoffman Avenue crossing is between Division Street and Pig Eye. It is used by the Great Northern and the Northern Pacific to deliver stock and other materials away from the Great Western.

Mr. Rockwood: That is all I have.

Exam. Dishman: Any questions, Mr. Boe?

Mr. Boe: No questions.

Exam. Dishman: Mr. Hillman?

Mr. Hillman: No questions.

Mr. Maguire: Before the redirect examination, can I have a moment to confer with the witness on certain facts?

Mr. Dishman: Yes.

Redirect examination.

By Mr. Maguire:

Q. Mr. O'Toole, with regard to this war-time tonnage, St. Paul and west, the figures of which you gave, what was the main route or routes of movement of that tonnage?

A. On the main line from St. Paul or Minneapolis to Seattle and Tacoma.

Q. And, so far as your branch lines were concerned, were there any material war projects east of Spokane; I mean, were there any substantial war projects, or war-time activity other than on the Great Falls Branch?

A. No, sir.

Q. What was it on the Great Falls Branch that created this activity, Mr. O'Toole?

[fol. 1448] A. The Anaconda Copper Company at Great Falls.

Q. Had that plant been in existence before the War?

A. Yes.

Q. And when you talk about substantial war-time projects, you then mean the increased output there at the Great Falls plant of the Anaconda Copper Company?

A. That is right.

Q. Black Eagle plant, I believe is the technically correct name, isn't it, Mr. Torinus?

Mr. Torinus: I think so.

Mr. Maguire: Yes.

By Mr. Maguire:

Q. Now, reference was made also in your cross-examination to helper service being used between South St. Paul and the Minnesota Transfer with steam locomotives.

A. Yes, sir.

Q. What will be the situation as to the need for helper service, as stated before, after they become one hundred per cent dieselized in operation?

A. We will need no helper service between St. Paul and Minneapolis.

Q. And was there a need for helper service until this temporary change from diesel to steam that you mentioned?

A. There was no need.

Q. Now, with regard to the numbers of trains that are passing over the tracks between South St. Paul and South [fol. 1449] Yard in Minneapolis—

Mr. Rockwood: Mr. Examiner, I hate to interrupt Mr. Maguire, but I have uniform made the same mistake that Mr. Maguire has made. South St. Paul is a town by itself, and I have refrained from using it in my questioning by referring to this yard at Pig Eye.

The Witness: South St. Paul is really on the Great Western.

Mr. Maguire: All right, we will take your colloquialism on this. We will say Pig Eye.

By Mr. Maguire:

Q. Tell us exactly where Pig Eye is located?

A. Pig Eye is located about, oh, 1.9 miles east of the St. Paul Union Depot.

Q. When you say east you mean the railroad time card direction?

A. That is right.

Q. All right. Between Pig Eye, then, and Minneapolis, what effect does the volume of trains through there have upon the ability to render prompt transfer service between Pig Eye and the Minnesota Transfer yard?

A. The passenger trains run in fleets in the morning and evening, and the rush car transfers from Pig Eye to Minnesota Transfer, to make the cut-off objective with the Great Northern and Northern Pacific, pass through that area between two a. m. and three a. m., and there are no passenger trains westbound on that railroad from about ten thirty

at night until the mail train in the morning, leaving St. Paul at about five a. m.—I will give it to you exactly.

[fol. 1450] Q. All right.

A. 5:50 a. m.

Q. And, how long on the average does it take a transfer run to go from Pig Eye to the Minnesota Transfer yard?

A. A light transfer, such as the so-called rush car transfers, will go from Pig Eye to Minnesota Transfer in about forty minutes.

Q. Yes.

A. On a heavy transfer, it will take about an hour and five minutes to an hour and ten minutes.

Q. And does that lapse of time in transit hinder or impede or otherwise interfere with the prompt interchange of cars?

A. I would say not, because we meet our objectives, and what congestion there is when the fleets are running in the morning, we have our transfer crew leave St. Paul yard so as not to conflict with the fleets because they would be setting up there for nothing otherwise.

Q. Yes. Now, as to these grade crossings which were mentioned from South Minneapolis to 29th Avenue South, are those street crossings or grade crossings protected by warning signals?

A. They are protected with the so-called Griswold signal, which is a rotating stop signal.

Q. Now, with your knowledge—

Mr. Maguire: I believe there is one question which I may [fol. 1451] have overlooked on direct examination, but I don't think that it will stir up much of a controversy. I would like to have permission to ask that question.

Exam. Dishman: All right.

By Mr. Maguire:

Q. I don't believe, Mr. O'Toole, that I asked you as to our comparative freight cars owned and leased in 1943, as compared to the present time?

A. As of December 31, 1942, we owned 56,618 cars, and as of December 31, 1953, we owned 57,000 cars even.

Q. Now, with your knowledge of the general condition of the road, of the freight car equipment owned and leased and the motive power available, in your opinion would there be any difficulty in the handling of the 1943 tonnage over our present plant?

A. No.

Mr. Maguire: That is all I have.

Exam. Dishman: Anything further, Mr. Rockwood?

Mr. Rockwood: I have no further questions.

Exam. Dishman: Any further questions by any defense counsel?

Mr. Boe: No.

Mr. Golden: That is all.

Mr. Torinus: Nothing further.

Mr. Hillman: I have no questions.

Exam. Dishman: The witness is excused.

(Witness excused.)

[fol. 1452] Mr. Maguire: We will rest our case at this time, Mr. Examiner.

Exam. Dishman: Complainant rests?

Mr. Maguire: Yes.

* * * * * * * *

[fol. 1470]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 31466

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, et al.,

vs.

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, et al.

Circuit Court, U. S. Court House,
620 S. W. Main St.
Portland, Oregon.

Transcript of Proceedings—Thursday, February 17, 1955

Met, pursuant to notice, at 9:30 a.m.

Before: L. H. Dishman, Examiner.

Appearances: (As heretofore noted.)

• • • • • • •

[fol. 1479] ROBERT B. TAYLOR having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Taylor, there has been confusion in my mind as to the correct spelling of the name of your company. Is is Timberline or Timberlane?

A. Timberlane.

Q. —l-a-n-e?

A. —l-a-n-e; not Timberline.

[fol. 1480] Q. Thank you. You testified at the Portland hearing in this docket on June 25th, 1954, and the transcript of your testimony begins at Page 246 in the record.

Mr. Maguire: 244.

By Mr. Rockwood:

Q. 244—excuse me. Do you sell in yards east of Chicago of a nature characterized by you as distribution yards in carload lots, which those yards in turn distribute in less than carload quantities or by truck to retail yards?

A. Yes, we do. We also sell in less than carload lots, that is, part carload lots.

Q. To so-called distribution yards?

A. To the same so-called distribution yards.

Q. Now, you testified at Page 246, I believe, of the record that there are no such facilities, characterized by you as distribution yards, in the Dakotas west of Chicago.

A. There may be distribution yards, but they are not known to us or customers of ours.

Q. And you testified to the effect that west of Chicago you adopted the practice of partial unloading at one yard for completion of unloading at another yard?

Mr. Maguire: Could that question be repeated, please? Just a moment, Mr. Taylor.

(Question read.)

The Witness: That is not exactly an adopted policy. It is a device which is desirable and is oftentimes used.

[fol. 1481] By Mr. Rockwood:

Q. Now, do you think that that method of doing business could be adaptable for application to territory served by the Milwaukee in South Dakota?

A. In the Dakotas, yes.

Q. In the Dakotas. Well, now, is that general situation of a lack of so-called distribution yards general throughout that tier of states, North Dakota, South Dakota, Nebraska and Kansas?

A. It seems to be, yes.

Q. Do you ship through each of those four states I just enumerated, North Dakota, South Dakota, Nebraska and Kansas, via the Great Northern and Northern Pacific, Milwaukee, the Union Pacific and the Burlington?

A. I can't answer that question specifically, the reason being that I do not have available at this time exact shipments as to whether we have done it or not.

Q. Well, I'm not asking you whether you stop for partial unloading. I'm asking you if it isn't true that you do customarily ship through each of those four states, North Dakota, South Dakota, Nebraska and Kansas, by one of these routes that I enumerated?

A. At times, yes.

Q. For instance, you'll use the northern lines, Great Northern or Northern Pacific through North Dakota, do you not?

A. I believe so.

Q. Do you use the Milwaukee to any extent for shipments [fol. 1482] into and through South Dakota?

A. Not at the present time.

Q. Do you use the Union Pacific or the Burlington for shipments into and through Nebraska or Kansas, or both of them?

A. Yes.

Q. Now, then, the situation with respect to marketing and the necessity for partial unloading is substantially uniform, is it not, from the northern boundary of North Dakota to the southern boundary of Kansas? The territory is generally similar, is it not, with respect to that matter of partial unloading?

A. You can't make a generalization because you have different customers in different states, of course, and in different localities, and the more customers you have available, the more sales potential you have.

Q. Of course. Can you name a so-called distribution yard anywhere in North Dakota?

A. I don't know of one.

Q. Can you name a so-called distribution yard anywhere in South Dakota?

A. No. If I had the lumbermen's redbook here, I could probably find one for you.

Q. Can you name a so-called distribution yard anywhere in Nebraska?

A. E. P. Boyer in Omaha.

Q. One in Omaha, which is on the eastern boundary of [fol. 1483] Nebraska, just across the river from Iowa, I take it, if my geography is correct. Can you name a so-called distribution yard at any point in the state of Kansas?

A. I'm sure there are many, but I can't name any of them.

Mr. Rockwood: Well, now, I move that that answer be stricken. I don't want—

By Mr. Rockwood:

Q. Can you name one?

Mr. Rockwood: May I have a ruling on my motion to strike that answer as not responsive?

Exam. Dishman: Off the record a minute.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Rockwood:

Q. Can you name a single one?

A. I can with a reference book. I would have to go back to—

Q. Does your—

Mr. Maguire: Let him finish his answer.

The Witness: I would have to go to our records.

By Mr. Rockwood:

Q. From your information, personal information and recollection, you are unable to name one as you are on the stand today?

A. That is correct.

Q. Have you ever compiled information to show how many cars were stopped for partial unloading in the state of North Dakota?

A. No, sir.

Q. Do you know whether a car was ever stopped for par- [fol. 1484] tial unloading in the state of North Dakota?

A. I know one customer—Gilbert, I believe his name is —in Pierre, South Dakota.

Q. Pierre, South Dakota?

A. Yes, and I believe he has several yards, and on occasion, approximately, I would say, two years ago, he ordered a car which he stopped over at one of his yards.

Q. Stopped it at Pierre, South Dakota?

A. I believe so.

Q. Where did the rest of that load go?

A. I don't recall.

Q. Was it to another yard in the immediate vicinity?

A. One of his other yards.

Q. In the general vicinity of Pierre, South Dakota?

A. Within the state, I would say.

Q. Do you know of your own knowledge of any instance in which you stopped a car for partial unloading in the state of Nebraska?

A. Yes.

Q. At what point? Give us the details of the car that you have in mind, or cars.

A. Well, I certainly can't give you the detail of the cars, but there were many. By "many" I would say, oh, maybe 800 over the last two or three years.

Q. Were they for actual partial unloading, or billed for partial unloading?

[fol. 1485] A. They were for actual partial unloading.

Q. At what points?

Mr. Maguire: Just a moment. Mr. Examiner, I believe the witness is entitled to be informed from the bench that he is not required to disclose any details of any shipment as to consignor or consignee or routing, or disposition, which might be embarrassing to the conduct of his business, or a value to his competitors, particularly in view of the fact that the marketing of lumber is a very sensitive business which requires a confidential position so far as between the wholesaler, his source of supply, and his source of sale.

So, when it comes to asking names, dates and places, I think the witness should be informed that it is within his privilege, if that will be embarrassing to him from a com-

petitive point of view, he can decline to answer the question.

Mr. Rockwood: I have a remark on that. If this witness or any witness wished to keep confidential details of his business of the nature that Mr. Maguire refers to, he could refrain from appearing on the witness stand unless subpenaed.

When he voluntarily presents himself as a witness, any privilege, which he may have had theretofore, is thereby waived. There are many privileges in the law which a witness may avail himself of, but, if he pursues certain conduct, he thereby waives the privilege, and, in this instance and in the instance of one of the witnesses in Chicago, having voluntarily subjected himself to direct exam-
[fol. 1486] ination and cross examination, he has waived his privilege with respect to subjects which are relevant to that which is covered on direct examination.

Mr. Maguire: Mr. Examiner, I wish to reply very briefly to that. The questions of names, dates and places—I'm using that in a generic term—as to details of any individual shipment, the witness was not called upon on direct examination to furnish any such details. He was called upon and testified voluntarily, it is true, as to the general pattern of his business and to the desirable effects that the rates and necessary routes in connection therewith, which are herein sought, to the extent that they would be desirable in the general conduct of his business, but he does not any more than any other witness—and I think that is an erroneous rule of law that Counsel has stated, that, if a man once gets on the stand in one connection, that he sacrifices all of his rights in all connections.

I don't believe that follows at all, and I still think that this witness is entitled to be—and all other witnesses in this line of business are entitled to be instructed as to their rights on cross examination.

Mr. Rockwood: I certainly have not asked that he waive every privilege that he has. I certainly ask that he waive the privilege that he has to refuse to disclose relevant information, relevant to a subject covered on direct examination.

Mr. Maguire: He just waived his rights to refuse to an-
[fol. 1487] swer any of your questions.

Exam. Dishman: Well, the Examiner will not request this witness or any other witness to disclose information that deals with trade secrets, or any other matter that affects his business from a competitive standpoint. That will also apply to future witnesses of yours, Mr. Rockwood.

Are you ready to proceed?

Mr. Rockwood: Yes. I take exception to the Examiner's ruling.

Exam. Dishman: All right, exception is noted.

By Mr. Rockwood:

Q. You say that in the past few years, I believe—if I quote you wrong, correct me—about 800 cars were stopped to part unload in the state of Nebraska?

A. There have not been any accurate records kept of the number of cars that were stopped, but that is my estimate.

Q. In the state of Nebraska?

A. Yes, sir.

Q. And what route were those cars moving on when they stopped? Union Pacific or Burlington, or what?

A. May I say something off the record for a minute?

Q. I think it should be on the record.

Exam. Dishman: Off the record just a minute.

(Discussion off the record.)

Exam. Dishman: On the record.

The Witness: Well, your question for specific details [fol. 1488] cannot be answered by me at this time because we ship thousands of cars, and, naturally, I would not have those names available unless specifically able to bring them here beforehand. If I knew beforehand, I would probably be able to get them.

By Mr. Rockwood:

Q. You testified with respect to a practice that you followed at Page 246, and you said:

". . . this particular proposal . . . "—that is, of the Milwaukee—". . . will be very good in our case in a situation

where we would stop over in the Dakotas a car to partly unload and then dump the rest or sell the rest in Chicago or put it in one of our friendly yards there in Chicago or perhaps even east of Chicago."

Now, is that a practice that you followed with respect to this approximately 800 cars that were stopped to part unload in Nebraska?

A. I'm sorry I can't answer your question.

Q. Can you answer this: As a general matter, were not cars which were stopped to part unload in Nebraska completely unloaded at some point in the general territory of Nebraska, presumably west of the Mississippi River?

A. Not necessarily.

Q. Not necessarily, but I asked: Is that a general practice?

A. The answer is: No.

Q. The answer is: No. Those cars, where were they completely unloaded as a matter of general practice, these [fol. 1489] 800 cars in Nebraska?

A. At any number of points, Chicago, Detroit, New York, Pennsylvania.

Q. What is the freight rate from a mill on the Southern Pacific, take Eugene, to Omaha? Do you know?

A. I think that's in the tariff, and I would just as soon not answer it. I don't know.

Q. You don't know. Do you know what the freight rate is to New York?

A. I don't know.

Q. Do you know what the freight rate is to any point east of Chicago?

A. Well, I presume that the rate is $1.30.

Q. Do you know what the minimum is on that $1.30 rate?

A. The minimum weight, you mean?

Q. Yes.

A. 60,000.

Q. That's on—

A. 60 or 50, depending on the size of the box car.

Q. And it is your practice, I take it, as you testified, of the 800 cars moving to Nebraska approximately, to pay the $1.30 rate with a 60,000 pound minimum on the entire contents of the car if it is to move into the $1.30 territory,

despite the fact that a part of the car has been—a part of the load has been taken out in Nebraska? Is that your practice?

[fol. 1490] A. That has been the practice in the past.

Q. And what is the per cent of your cars that you sell in transit?

A. I would rather not give you that percentage.

Q. I think you've already given it.

A. I testified in excess of 7,000 a year.

Q. And of those, I think you disclosed how many were transit, and how many were not?

A. I said, in addition, there were about 1,200 that were not transit.

Q. So, it would be 7,000 and 1,200, transit and non-transit?

A. Approximately, yes.

Q. We can figure the percentages ourselves. How long a period of time did you have in mind when you talked about 800 cars being stopped for part unload in Nebraska?

A. About two years.

Q. Am I correct then in saying that about 400 cars a year are stopped in Nebraska for part unloading?

A. If you put it in the past, yes. That is not being done at the present time.

Q. Well, at the present time, what is your practice?

A. Well, as of today, we are selling the cars for the most part in carload lots.

Q. And not stopping to part unload?

A. And not stopping, but the conditions could very easily [fol. 1491] change tomorrow, and the more opportunities we have to use such a practice, the more sales potential there is.

Q. Do you sell those cars, which are in fact partly unloaded in Nebraska, taking that as one state, a state in which the practice was used, do you sell those firm, or are they sold as transit cars?

A. Both.

Q. Probably you don't have the information, but I'm going to ask you: Could you give us for any period, if you have it for 1953 or 1954, I'd like to have it, the number of cars which were stopped for actual partial unloading in

the states of North Dakota, South Dakota, Nebraska and Kansas?

A. I don't have it.

Q. You don't have exact figures. Could you give us approximate figures?

A. No, I'm sorry, I couldn't.

Q. You in the past have followed a practice of billing out a good many cars for part unloading at one point, which are not in fact partly unloaded at that point, isn't that correct?

A. They were billed in accordance with the tariff.

Q. Well, that doesn't answer my question as to part unloading at one point where you did not actually part unload at that point.

A. I can't answer that question.

Q. Is it not a fact that for many of your cars, which [fol. 1492] moved from SP&S points via the northern lines to Minnesota Transfer, you billed them for an ultimate destination east of Chicago with routing via the Omaha to Mankato, Minnesota, for part unload?

A. That is not being done at the present time.

Q. But it has been done in the past?

A. On occasion, yes.

Q. You in the year 1954 sold cars for the Holden Lumber Company, did you not, at wholesale?

A. That is correct.

Q. And is it not true that the major part of the Holden Lumber cars, which you shipped in 1954, you billed them to Mankato, Minnesota, for part unloading?

A. I would have to review our records.

Q. But you know that that practice was indulged in?

A. Not on those specific cars, I don't know.

Q. You mean you don't have the information now? You're not denying that the practice was indulged in? You simply—

A. I'm neither denying or agreeing.

Q. Because you don't have the information?

A. I'm just avoiding the question.

Q. Who's in charge of the routing of your lumber shipments?

A. I am.

Q. And you, who are completely in charge of routing lumber shipments for Timberlane Company, deny now that you have any information as to whether they were billed to [fol. 1493] Mankato, Minnesota, for part unloading, and that it was frequently used in the year 1954?

A. No, I didn't say that.

Q. I misunderstood you. Was it frequently used in the year 1954?

A. I don't recall specific instances. It could have been. I would have to check the records.

Q. I'm not asking for specific instances. I'm asking: As a general practice, wasn't that—

A. As a general practice—

Q. —wasn't that a rather—wasn't it used rather extensively in the year 1954?

A. On the cars for Holden?

Q. Yes.

A. I would have to check our specific shipments.

Q. Was it not used extensively—maybe my adjective "extensively" or my adverb "extensively" is not correct—but was it not used also with respect to shipments from other SP&S points which moved via the northern lines?

Mr. Maguire: Mr. Examiner, I fail to see the materiality of this line of questioning. If Counsel would explain, the materiality might appear.

Mr. Rockwood: I'm coming around. Maybe you'll see it in a few minutes.

Mr. Maguire: I think I'm going to object to these ques- [fol. 1494] tions unless the purpose of it is revealed at this time by Counsel.

Mr. Rockwood: All right. He testified that he shipped 2,000 cars per year which were partially unloaded on Page 256 of the record, and I am wondering and I'm trying to find out whether that includes cars, which were billed for part unloading, which were not in fact partly unloaded.

I'm trying to find out his practice with respect to billing to partly unload, to find out whether that indicates the cars were in fact unloaded.

Mr. Maguire: Well, then, if that is the purpose of the cross examination, Mr. Examiner, I would suggest that

the question can be asked by referring to this page of the testimony as to whether the 2,000 which were stopped to part unload, whether they were in fact stopped, instead of beating about around the bush about it.

I think the witness is entitled to a direct question.

Mr. Rockwood: He'll get it.

Mr. Maguire: I want to make sure that we just (sic) these questions in a sincere and honest manner so as not to mislead the witness.

Mr. Rockwood: Will you please cross examine for me then?

Mr. Maguire: I'd like to.

Exam. Dishman: Let's proceed, gentlemen.

By Mr. Rockwood:

Q. I come back. Was it not a practice followed rather extensively in the year 1954 by Timberlane on shipments [fol. 1495] for points, which moved over the northern lines, to bill for part unloading at a point where there was in fact no part unloading?

Mr. Maguire: There's the same objection to that, Mr. Examiner. Now, Mr. Rockwood has stated the purpose of this question is to the 2,000 cars which are mentioned on Page 256 of the transcript.

The witness testified that—Mr. Torinus asked this question:

"How many shipments in the last 12 months, Mr. Taylor, did you make wherein the cars were stopped to part unload between origin and destination?"

Mr. Taylor answered: "Of course, I do not have that figure, but in the last 12 months I would judge 2000. That would be an estimate."

Now, then, that has no connection whatever as between that statement and cars which may have been billed to stop to partly unload, but which were not in fact stopped. Now, if Mr. Rockwood wants to cross examine further upon that one point, that's one thing, as to whether they were actually stopped, but he is now going off into a fishing expedition as to how many were billed to stop and did not

stop to part unload, which are entirely two different questions, and that phase of the question I object to as irrelevant.

Exam. Dishman: As I understood, the witness said he [fol. 1496] didn't have that information anyway. So, it doesn't do any good to pursue that matter further.

Mr. Rockwood: Mr. Examiner, he has not said that he cannot testify with respect to practice. He has said that he has no information with respect to the details or number, but, on the matter of general practice, he has not said that he does not have the information.

May I have the question read, please?

The Witness: I think I can answer the question in this way: At the time those cars were billed out, it was believed that they would be partially unloaded. Sometimes they were not. I would say many times they were not partially unloaded, but it was the practice because it was anticipated that they would be partly unloaded.

By Mr. Rockwood:

Q. You used Mankato, Minnesota, as a partly unload point on many of the cars that you billed, did you not?

A. We used several points. I would imagine that on occasion we did—I can't answer your question.

Q. You cannot tell us whether or not you used Mankato?

A. Not specifically.

Q. As a part unload point—

Mr. Maguire: Just a moment. He said, "Not specifically". I'd like that answer to appear in the record.

By Mr. Rockwood:

Q. And I repeat: Are you unable to tell us whether or not you used Mankato, Minnesota, very frequently as a [fol. 1497] point to which the car was billed for partly unloading in the year 1954? You can't—

A. I can't answer that without checking.

Q. You cannot answer that question –

Mr. Maguire: Just a minute. You're telling him something. Give him a chance to answer your question.

Exam. Dishman: Yes, go ahead.

Mr. Rockwood: He's answered, I think.

Mr. Maguire: No, he hasn't. You've been going on in a monolog for the last five minutes.

Exam. Dishman: I want this in the witness' own words. Do you have anything more to say about that?

The Witness: Let me explain how we route our cars. We set up a policy of routes, and we generally follow it. The girl actually calls the railroad and tells them what route to put on it, but the general policy is set by myself.

So, in effect, it is my responsibility that the cars are routed. The actual mechanics are not handled by myself.

By Mr. Rockwood:

Q. Did you instruct this girl, who is your subordinate, to use Mankato, Minnesota, as a part unload point, to bill them to Mankato, Minnesota, for part unload?

A. On the Holden cars, I would have to check. I would have to check them specifically.

Q. Did you on any cars?

A. Yes, I would say I did on specific shipments.

[fol. 1498] Q. Do you have a customer in Mankato, Minnesota? I don't want his name. Do you have a customer?

A. No.

Q. Do you know what the population of Mankato, Minnesota, is?

A. None, probably.

Q. Do you know anything about the sales potential in the Mankato area?

Mr. Maguire: Just a moment before you answer that, Mr. Taylor.

Again I wish to renew my objection to this line of cross examination because it has no bearing upon the issues in this case. Now, we've gotten away entirely from the excuse that Mr. Rockwood first made about it, and that was he wanted to question him about these 2,000 cars that were stopped to part unload.

He is departing entirely from that and is off on another tack, and I think that he should, before this line of inquiry should be allowed to proceed further, that he should show

now—that he should disclose his purpose in following this particular line of inquiry, so that we can tell and the Examiner may rule as to whether the line of inquiry is relevant or not.

Exam. Dishman: What have you to say to that, Mr. Rockwood?

Mr. Rockwood: I'm coming around. I'm developing a point. I never heard that the cross examiner had to tell the other Counsel what he was ultimately getting at, as long as it's shown it's relevant, and I have shown it's relevant.

[fol. 1499] Mr. Maguire: Well, up to this point, there has been no showing that it's relevant. He merely says that his first plea for the relevancy was a reference to these 2,000 cars referred to on Page 256.

Now, he has abandoned that and is on an entirely different line of inquiry, and I object to it upon the ground that it has not been shown that it was within the issues of this case, regardless of what the—

Mr. Rockwood: Mr. Examiner—

Mr. Maguire: Just a moment.

—regardless of what the ultimate purpose may be. I object to questions which taken so far are obviously irrelevant to the issues.

Mr. Rockwood: I am sorry that so far I haven't been able to show Mr. Maguire what relevancy my questioning has. This witness testified that this Milwaukee route was necessary in order to handle part unloads, and I'm trying to find out whether the billing of a car for partial unloading means that it's unloaded, and I'm also going to try to find out, if Mr. Maguire will allow me to, the extent to which cars are actually partly unloaded west of Chicago for complete unloading east of Chicago.

Mr. Maguire: Well, then, if that is the purpose of Counsel's inquiry, that can be reached very directly and very simply with this witness, without beating around the bush about it.

Mr. Rockwood: Yes, the questions—if it can be done [fol. 1500] simply, go ahead and ask them.

Mr. Maguire: I'm not conducting this cross examination. You are, but I'm going to keep it within bounds.

Exam. Dishman: Well, Mr. Rockwood, proceed and make the questions direct.

Mr. Rockwood: What was the question before all this?

(Question read.)

Mr. Maguire: Just in order to save time here, Mr. Examiner—I don't wish to be bobbing up on every question—may it be understood that my objection extends to this entire line of questioning?

Exam. Dishman: All right.

By Mr. Rockwood:

Q. Mr. Taylor, if you don't have a customer at Mankato, why do you bill cars to part unload at Mankato?

A. It's a convenient point.

Q. Convenient for what purpose?

A. Convenient for diverting.

Q. Convenient for diverting the entire carload to some other point?

A. Or a part of the car.

Q. Mankato is west of Minnesota Transfer?

A. Are you making a positive statement?

Q. No. I'm asking you: Is Mankato west of Minnesota Transfer?

A. I don't know.

Q. Why is it convenient?

[fol. 1501] A. It's a route solicited by the railroad as a convenient point.

Q. Via Omaha—

Mr. Maguire: By whom? By whom is it solicited by?

The Witness: By the railroads involved.

By Mr. Rockwood:

Q. By the Omaha Railroad? Who solicits the movement over that route?

A. Well, there are several lines, of course, that are interested in our cars going by that route.

Q. Via Mankato?

A. Yes.

Q. What lines are interested in seeing that the car moves via Mankato?

A. Well, primarily the Chicago and North Western has been interested in it.

Q. And the Omaha is a part of the North Western System. Well, why is it convenient to bill to Mankato for diversion? You said it was a convenient point for diversion. Why?

A. Because there are many possibilities where you could divert the car.

Q. Is it more convenient than Minnesota Transfer?

A. I wouldn't say that.

Q. Aren't there as many points to which you can divert from Minnesota Transfer as from Mankato?

A. I don't know.

Q. You don't know?

[fol. 1502] A. I don't know if there are more points.

Q. On all these cars moving via the northern lines to Mankato, billed to Mankato to part unload at Mankato, they move via the northern lines to Minnesota Transfer, do they not?

A. I can't answer that question.

Q. Are there any cars that you route to Mankato, Minnesota, to part unload that move east by any other transcontinental route, other than the Great Northern or Northern Pacific?

A. I don't know of any.

Q. On the cars which you billed, as you say you did, for part unloading at Mankato, Minnesota, are you able to tell us whether any one of those cars was partly unloaded at Mankato?

A. Not without checking.

Q. Can you say that some were, or you just don't know whether any were?

Mr. Maguire: I think that question has been answered, Mr. Examiner. He said he could not answer the question without checking.

Exam. Dishman: That's right.

By Mr. Rockwood:

Q. You are unable to tell us then whether or not any one of these cars, that was billed to Mankato for partial unloading, was in fact partly unloaded at Mankato?

Mr. Maguire: Objected to on the ground that the question has already been answered.

Exam. Dishman: Yes, the question has already been answered.

[fol. 1503] The Witness: Yes. Without checking, I can't answer it.

By Mr. Rockwood:

Q. All right. Can you tell what the fact is as to whether cars billed Mankato, Minnesota, for part unloading were ever in fact—if they ever in fact reached Mankato, or were diverted, before reaching Mankato, to another destination?

A. Not without checking the records.

Q. Well, now, do you know—

Mr. Maguire: He said—

By Mr. Rockwood:

Q. —if they in fact were—

Mr. Maguire: He said he could not without checking his records.

By Mr. Rockwood:

Q. It's a fact, is it not, that in your business, where you would bill to Mankato, Minnesota, to part unload, a sale of that car would be made before it reached Minnesota Transfer and diverted to a route so that it would never reach Mankato? That's correct, isn't it?

A. That's another of those questions that I couldn't answer without checking the records. There is a possibility that it did occur.

Q. Well, you are in charge of routing. Would you say that it's only a possibility? You're not willing to say that it does happen?

A. That is correct.

Q. If I gave you examples of particular cars, would you [fol. 1504] be able to verify what happened to those cars?

A. I would not wish to do so because you're undoubtedly referring to our suppliers and our customers, and there are others in attendance that are in the same business that we're in. As a matter of fact, they're our competitors.

Q. If it will help you any, Mr. Taylor, I'm going to ask them questions on this too.

Mr. Rockwood: I would like to have this witness supply information as to one car shipped by his company as consignor as a typical example—well, I won't say it's a typical example—I don't want to give a false impression. I would like to have him determine from his records for NYC 152062, billed out of Prescott, Oregon, on May 19, 1954, by his company as consignor, the billing of that car to the original billed destination, with directions which may have been contained in the shipping order for stop unloading, and the diversion of that car to show the ultimate destination, and the route which the car actually traveled.

By Mr. Rockwood:

Q. Can you furnish that information?

Exam. Dishman: What does Counsel say about that?

Mr. Maguire: On that, I do not believe it's within the scope. It's improper cross examination, in the first place, and it's entirely improper, which I contend is an improper field of inquiry here, which is not relevant to the issues of the case, as I said before.

[fol. 1505] Exam. Dishman: You don't propose then to have the witness furnish it?

Mr. Maguire: I do not propose to instruct the witness to furnish anything. That's within his own convenience and counsel as to that.

I think Counsel has already gotten rather dangerously on the verge of a violation of the section of the Act which forbids the disclosure by the carrier of the origin, routing, consignor, consignee, or destination of any shipment. He is already close to the edge of that, and this witness is en-

tirely within his privileges in refusing to give any such information.

Exam. Dishman: Well, let the record show that the information shall not be furnished.

By Mr. Rockwood:

Q. Are you willing to give that information, Mr. Taylor?
A. I don't have it.
Q. You don't have it here. Well, are you willing to supply a copy of the shipping order and the diversion order on that car?
A. No.
Q. You're not willing to?
A. No.
Q. You decline to?
A. Yes, sir.

Mr. Rockwood: I take it the Examiner has ruled that the witness will not be directed to.

[fol. 1506] Exam. Dishman: The record will so show the position of the witness and his Counsel on it.

Mr. Rockwood: I take exception, of course, to the ruling that the witness can select what he will or will not answer on cross examination.

Mr. Maguire: Let me make this statement, Mr. Examiner: Prescott is a local SP&S origin, and the defendants and their intervenors have within their hands all of the records on this, and, if they wish to take the chance of violating the provisions of the Interstate Commerce Act regarding unlawful disclosures of a shipper's transaction, they have the information and they can furnish it.

This witness is not the sole source of information.

Mr. Rockwood: Are you willing that that information be stated in the record now for purposes of cross examination, if I want to take the chance?

Mr. Maguire: I'm going to object to it, in the first place, on the ground that this whole line of inquiry is entirely irrelevant.

Exam. Dishman: We're getting away from cross examination here at the moment.

Mr. Maguire: I'm not going to stipulate that you can put anything into the record at this time, Mr. Rockwood, without a witness to testify on the stand subject to cross examination.

Mr. Rockwood: All right, we'll have it.

[fol. 1507] By Mr. Rockwood:

Q. What percentage of your total sales are east of the Illinois-Chicago line?

A. I have no idea.

Q. You have no idea?

A. No idea.

Q. You haven't any idea whether it's as much as 1 per cent or as much as 90 per cent?

Mr. Maguire: Just a moment. That I object to on the ground that that is repetitious cross examination. Questions along that line were asked before.

Exam. Dishman: Well, the witness said he had no idea.

Mr. Rockwood: When he says he had no idea, I want to know whether he can tell within 10 per cent.

The Witness: Well, I say, like I did before, I gave an estimate on these 2,000 cars, and then you started pinning me down by saying: How many stopped over in this state, and how many stopped over in that? Why, you'd try to add it up to the 2,000 cars if I make an estimate, which is only what it would be, and you're trying to add it up against me, so to speak.

By Mr. Rockwood:

Q. So, you decline to answer the question for fear I'll misuse your testimony?

A. That is correct.

Q. Well, I don't know what use I'm going to make of this, but is the major part of your sales territory east of the Mississippi River?

[fol. 1508] A. Yes.

Q. And is it as much as 75 per cent east of the Mississippi River, which would include Wisconsin, Illinois?

A. Actually, I don't know that. There has never been an estimate made on those sales, a breakdown by states.

Q. You have never compiled as a matter of course in your business a statement showing the distribution of your cars by states?

A. No, sir.

Q. Never done that?

A. Never done that.

Q. You say that—I've forgotten the figure you gave—the major part was east of the Mississippi River?

A. Well, you asked me if a major part was, and I suppose that it is.

Q. Yes, and I say east of the Mississippi includes Wisconsin and Illinois. Would you be able to give us any idea, sir, as to what proportion of your business is west of Chicago in the tier of states, Illinois, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska and Kansas, that block of states there in the upper middle west?

A. No, I wouldn't.

Q. I'm not going to misuse your testimony, but is it in the neighborhood of 10 per cent, or 50 per cent?

A. Actually, I—

Exam. Dishman: The witness says he doesn't know. Let's [fol. 1509] don't pursue that.

The Witness: We never compiled any data on that at all, and any statement I'd make would be—could be off a thousand per cent.

By Mr. Rockwood:

Q. Did Mr. Maguire ever show to you a questionnaire, which is a part of Exhibit 17, made a part of the record at the Chicago hearing, beginning on Page 6 and running over onto Page 7 of that exhibit? Did Mr. Maguire ever show that to you? You can take a look at it, Pages 6 and 7 of Exhibit 17.

A. Yes. Yes, I saw that.

Q. Did you make any effort to prepare data of that character?

A. Absolutely not. It would be a tremendous cost to dig all that information out of our files.

Q. Even though the request was qualified by the statement on Page 1 of the exhibit that, if shipments were over 2,500 cars a year, data is requested only for one week in—

Mr. Maguire: Six months.

By Mr. Rockwood:

Q. —in each of six months?

A. We don't wish to have that information made public.

Q. It could be compiled, could it not? The records are still in existence to compile it?

A. What are the dates?

Q. The year 1953. In your case, being over 2,500 cars a year, I asked for information of that character for the first [fol. 1510] full week in each of the months of January, March, May, July, September and November. Are the records still—

A. The records are still there.

Mr. Rockwood: Did you have a remark, Mr. Maguire?

Mr. Maguire: Well, I was going to say, Mr. Examiner, at Chicago this question was taken up when Mr. Rockwood filed this request, and I said that I was not going to request any of these witnesses to furnish that data on various grounds, and that I would not require them to do it.

I did show Mr. Taylor the request of Mr. Rockwood, and Mr. Taylor made the same remark then that he has just made to Mr. Rockwood.

Mr. Rockwood: Thank you. That's very helpful.

Mr. Maguire: I thought it would be.

The Witness: You didn't expect us to compile that, did you?

Mr. Rockwood: Is that question directed to me? That's all I have of Mr. Taylor.

Mr. Torinus: I have no questions, Mr. Examiner.

Exam. Dishman: Any other questions from intervenors?

Mr. Golden: Yes, Mr. Examiner.

Exam. Dishman: All right, Mr. Golden.

By Mr. Golden:

Q. You indicated, I believe, in your statements a few minutes ago that the part unload business on lumber is somewhat seasonable?

A. No, I did not indicate it was seasonal at all. I said [fol. 1511] that, while it may possibly have been done, it was not being done at the present time. I did not say it was seasonal.

Q. I see. Was it done in 1954 to any considerable extent?

A. We have covered that question, I think.

Mr. Maguire: I think that this is repetitious questioning.

By Mr. Golden:

Q. How about 1953?

Exam. Dishman: Yes. Let's avoid repetition. It seems Mr. Rockwood has been over that.

Mr. Golden: I haven't heard a question of this about 1953.

By Mr. Golden:

Q. Was it done at that time?

Mr. Maguire: You were talking about 1954.

The Witness: Well, he said '54 and '53. There again I don't know without checking the records on it.

By Mr. Golden:

Q. In other words, all you know is that perhaps it has been done at some time in the past?

Mr. Maguire: Just a moment.

By Mr. Golden:

Q. Is that it?

Mr. Maguire: Just a moment. We're going over the same ground that Mr. Rockwood went over.

Exam. Dishman: Yes. We want to be very careful not to do that, gentlemen. You have to watch this cross examination.

Unless you have some new questions, Mr. Golden, some direct questions, let's don't belabor these points.

Mr. Golden: The only thing that he has said is: It is not being done; it has been done some time in the past. Now, I [fol. 1512] want to know when.

Exam. Dishman: Is that what you said? If that's it, I'll let it stand.

Mr. Golden: That's what I want understood.

Exam. Dishman: Can you answer that, Mr. Witness?

Mr. Maguire: I think the testimony of the witness on cross examination by Mr. Rockwood will speak for itself. Now, he doesn't need Mr. Golden to summarize it.

Exam. Dishman: Did you answer, Mr. Witness? Did you answer that question?

The Witness: What is the question now?

By Mr. Golden:

Q. The question is: It's been done some time in the past, but you don't know when it has been done?

A. I said it possibly was done in the past, but it is not being done now.

Q. When did it stop?

A. If it was possibly done, it possibly stopped six or eight months ago.

Exam. Dishman: That is all a matter of conjecture.

Mr. Golden: I think it is too. I agree with you, Mr. Examiner. That's all I have.

By Mr. James:

Q. Is it a fair statement, Mr. Taylor, that your appearance here is based on your belief that it is to your advantage to have the greatest possible number of open routes for your products?

[fol. 1513] A. That is correct.

Mr. James: That's all.

Mr. Hillman: No questions.

Exam. Dishman: Mr. Boe?

Mr. Boe: No questions.

Exam. Dishman: I think that concludes the cross examination.

Mr. Maguire: I think I have nothing on redirect.

Exam. Dishman: Witness is excused.

(Witness excused.)

Exam. Dishman: We'll take a short recess now.

(Short recess taken.)

Exam. Dishman: We will come to order, gentlemen.

Mr. Maguire: I can state at this time, Mr. Examiner, that, pursuant to the suggestion made by the Examiner at the close of the Chicago hearing, after receiving notice from Counsel as to whom they wish to cross examine, I applied to the Secretary of the Commission for the issuance of subpenas, which have been served upon all the witnesses who are appearing here, all of these witnesses except Mr. Engel. I have not subpenaed Mr. Engel, of course, but all of the witnesses who will appear here, it will be understood they will have had subpenas served on them, and the subpenas and the acceptance of service will be filed with the Secretary of the Commission in due course.

Exam. Dishman: That applies to all witnesses who are now appearing for further cross examination?

[fol. 1514] Mr. Maguire: For further cross examination.

Exam. Dishman: Except Witness Engel?

Mr. Maguire: Except Mr. Engel.

Exam. Dishman: All right.

Mr. Maguire: The next witness will be Mr. Marvin H. Knutson, and his testimony for the convenience of the parties commences on Page 366 of the record.

Mr. Rockwood: Shall I proceed?

Mr. Maguire: You may proceed as far as I'm concerned.

MARVIN H. KNUTSON having previously been sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Knutson, you stated that you are a partner and the Office Manager of the firm of Eugene Willamette Lumber Company?

A. That's right.

Q. At Eugene, and that you supervise the routing of all cars handled by your firm as wholesalers?

A. That's right.

Q. And I take it in that capacity you have some familiarity with the routes which are available for lumber shipments from the Pacific Northwest and the restrictions which apply over those various routes. That's correct, is it?

A. Generally, yes.

[fol. 1515] Q. The term "traffic expert" has been loosely used. Is your experience in the routing of lumber such that you have become familiar with tariffs, or do you depend on other sources of information for the specific contents of tariffs?

A. We depend on the other organizations who have offices in Eugene for specific information.

Q. Do you know, for instance, how many diversions are allowed on a car of lumber which you ship as a transit operator?

A. Yes.

Q. How many?

A. One.

Q. One between the point of origin and the ultimate destination?

A. Correct.

Q. And after a car has been diverted, you cannot divert it again at the through rate?

A. Right, without changing the destination.

Q. Now, you stated at Page 368 of the record that your business is approximately 75 to 80 per cent transit cars, and the balance is firm orders. Is that situation true today, as it was when you testified last June?

A. Pretty much so.

Q. And you testified that you generally cover the whole United States. Then you added: "Most of the business, of course, is in the east, southwest, and south and some in the middle plains area." Is that true today, as it was in June last year?

[fol. 1516] A. It may have changed a little bit. We're doing more in the southwest and also in the northern plains areas, and into eastern North Dakota.

Q. Eastern North Dakota?

A. Yes; more than the western part of the state.

Q. What routes do you use to those destinations in eastern North Dakota, and western North Dakota?

A. I believe the northern lines mostly.

Q. Great Northern and Northern Pacific?

A. Yes.

Q. And over those routes, you have no difficulty in getting through routes from origin points on the SP&S lines?

A. So far, I don't know of any.

Q. What proportion of your business is in the east? And by the term "east", I mean east of the Illinois-Indiana line, and north of the Ohio-Potomac.

A. I couldn't give any close estimate on it.

Q. You couldn't give us within 10 per cent, one way or the other?

A. No.

Q. Would you say most of the business is—well, you say most of the business is east, southwest and south. Can you tell more closely than you did then with respect to any of those territories that you described in that answer?

A. No, I couldn't give you any specific information on it.

Q. Can you tell us—can you be any more specific than [fol. 1517] you were then as to how much you do in the so-called middle plains area?

A. I couldn't give you any percentage on it. The reason I say that: We've increased our business in total there. We have a new outlet there.

Mr. Maguire: May I have that answer read, please?

(Answer read.)

The Witness: That has increased our business for us.

By Mr. Rockwood:

Q. What area of the United States did you have in mind when you said or used the phrase "Middle plains area"?

A. North and South Dakota, possibly Minnesota, Kansas, Nebraska, Oklahoma.

Q. Did you include Wisconsin and Illinois and Iowa?

A. No, I wouldn't include that in there.

Q. So, you do some in the state of Minnesota?

A. Yes.

Q. And the tier of states, North Dakota, South Dakota, Nebraska and Kansas?

A. That's right.

Q. But, as to that area, you can't tell us what percentage your total business is?

A. No, I couldn't.

Q. Can you give us a single example of a firm order handled by you since January 1, 1953—that's the last two [fol. 1518] years—which was rejected by the customer at the original billed destination?

A. No, I can't give a specific answer on that.

Q. Can you say that there was a case of rejection of a firm order?

A. No, I can't say there was.

Q. If a firm order were rejected at the original billed destination, and you were in the proper territory ratewise, you would be able to divert that to another destination? That's correct, isn't it?

A. Theoretically, yes, it's correct.

Q. If you had a firm order on the Milwaukee—a firm order—from an SP&S point to a local point on the Milwaukee east of Mobridge, South Dakota, and that were rejected by the customer, you would be able to divert that car to another local point on the Milwaukee, could you not?

A. I really don't know. I couldn't answer that question. I haven't any information on it.

Q. You cannot then answer this question: If you shipped a car to a station immediately east of Mobridge, a firm order, on the Milwaukee, and it were rejected, you c. t tell us whether or not you would be able to divert that car to Minneapolis, Minnesota, via the Milwaukee?

A. No, I can't tell you for sure.

Q. Well, why do you want Milwaukee routing?

A. So we have an open routing via the Milwaukee to [fol. 1519] Chicago and east.

Q. Chicago and east. You're not concerned particularly with the territory on the Milwaukee west of Chicago?

A. Not particularly, no. Our business that is sold there is 75 per cent to 80 per cent transit, and 25 per cent firm.

Q. So, all you're after is a chance to roll the car over the Milwaukee to Chicago and divert it east?

A. That's not all we're after, no.

Q. Well, what more are you after?

A. Well, we would like to work that territory in there a lot more, but we haven't tried to work it.

Q. Why can't you work it today?

A. Because of the traffic gimmick involved between the Milwaukee and the northern lines.

Q. What is the traffic gimmick?

A. You mentioned this rejected car. Now, we haven't tried hard for more business in that area. We know about those deals. We have had rejected cars in other parts of the country, numerous ones, and—

Q. All right, and you—

Mr. Maguire: Let him finish.

The Witness: And to get a rejected car there, sure, we can divert it to other places or send it on to other places, but the area is very limited.

By Mr. Rockwood:

Q. And were you one of the gentlemen—I don't recall [fol. 1520] who—that used the word "pocket", the Milwaukee cars being in a pocket? If you get it in there, you can't divert it off the Milwaukee?

A. I never used that term.

Q. Some of our friends did, but that is what you're afraid

of, that, if you get a car in there, a firm order, you couldn't get it off the Milwaukee?

A. Right.

Q. Suppose you moved a car via—what is your most common billing point on eastern movements?

A. We have several.

Q. What's the most used one?

A. We use Chicago quite a bit through Minnesota Transfer.

Q. As the original billed destination?

A. Yes.

Q. And then you hope to be able to sell the car before it reaches the original billed destination?

A. That's right.

Q. Now, if the car is sold and is diverted in transit to any point in the United States over which the through rates apply, and it gets to that diverted destination and is then rejected, what do you do with the car?

A. Call up the local railroad station or one of the representatives there, who is a pretty good technical man, to find out what territory we can move it into, the cheapest [fol. 1521] rate, cheapest combination, just get all the information we can, and then just try and sell it. That's the only way we possibly can do it.

Q. You can't move a car that has been once diverted to another destination on the through rate from the coast, can you?

A. No, I don't believe you can.

Q. So that, if a car is once diverted and is rejected at the diverted destination, that car is in a very tight little pocket, isn't it?

A. Yes, it is.

Q. Now, of your transit cars, is it not the usual thing that the car is never tendered for delivery to a customer until after one diversion?

A. In case of a transit car? No, I wouldn't say that, not always.

Q. Sometimes it is tendered for delivery at the original billed destination, such as Minneapolis or Chicago?

A. Oh, that could happen. If it happened to be another

consignee, you'd just have to change the consignee at that same location.

Q. In that location?

A. Yes.

Q. And in those instances, where you can sell a transit car at the original billed destination, a diversion would not be necessary to dispose of the car?

A. That's right. To change the destination would not be [fol. 1522] necessary.

Q. Yes, a change in destination would not be necessary, and you could sell such a car at the original destination without any further diversion?

A. That's right.

Q. And if you could not find a sale at the original billed destination, there would be the possibility of diverting to another destination?

A. Right.

Q. How usual is it on a transit car that it is sold to the original billed destination?

A. Not very often. I can't think of very many.

Q. It's the most usual case, is it not, that there is no tender of delivery is made to the customer until after one diversion?

A. In the usual, yes.

Q. And if it is then rejected, that car is stuck at that destination, and, unless you are able to dispose of it to another destination—to another customer at that destination, you have to pay probably a local rate?

A. That's right.

Q. From that diverted point to another destination?

A. Yes.

Q. So that, that car at the diverted destination, after one diversion, is in an extremely tight little pocket, we'll call it, because you can't get outside of that destination to dispose [fol. 1523] of it. That car is a whole lot worse off, isn't it, than a Milwaukee firm car, sold firm in South Dakota, which is rejected?

A. (Nodding.)

Exam. Dishman: What is the answer?

The Witness: Yes.

By Mr. Rockwood:

Q. So, the fact is that the hazard of disposing of rejected cars for almost all of your transit cars is greater than that which you described on a firm sale onto the Milwaukee and rejected at destination?

A. Well, it would be.

Q. And that's true, is it not, even though you have wide open routing via the Milwaukee?

A. It could be.

Q. Since 1953—since the beginning of 1953, you say you have had many cars rejected after diversion. What disposition is made of those cars?

A. I think the word I used was "numerous". We sell them locally or pay a combination to the nearest place.

Q. What do you mean by the word "numerous"? One of a thousand, or 900 in a thousand?

A. I can't give you any specific figures on that—maybe one in a thousand. That would be about it.

Q. Did Mr. Maguire show to you the pages of this Exhibit 17 that relate to the Eugene Willamette? I'll show them to you.

[fol. 1524] A. No, he didn't show them to me.

Q. Was any—I want you to see them just a second. I am showing you Pages 10 and 11 of this Exhibit 17, which relate to your company. Did you ever see those sheets?

A. No.

Q. Was any request or suggestion or inquiry directed to you as to whether information of that nature could be compiled?

A. No.

Q. Glance through there, will you, please, and tell us whether the records of your company are still in existence from which that information could be prepared?

A. Yes.

Q. How many carloads did you sell, or do you sell per year at Eugene Willamette?

A. Between 5 and 6 thousand a year.

Q. And I call your attention to the fact that the request for the data was qualified so that, if the company was selling over 2,500, we asked, not for a full year, but for the first

full weeks of each of the months of January, March, May, July, September and October. That's six separate weeks.

How long would it take you to compile that information from your records?

A. Guessing, I'd say it would take a girl about a month.

Mr. Maguire: If I may interrupt at this time, Mr. Examiner, I make the same comment with regard to this line of [fol. 1525] questioning of Mr. Knutson as to the demand made in Exhibit 17 as I did in connection with Mr. Taylor. I did not ask Mr. Knutson to furnish the information, and I don't recall that I showed him, or that he read this demand that Mr. Rockwood is referring to.

If Mr. Knutson was not in the room before, I will—I think he was, however, when Mr. Taylor was on the stand—I do not intend to request the information of him, and I think that, if he has not heard from the bench, that he should also be advised as to his rights in not furnishing data which could be used as a detriment, that would be to the detriment of his business with any competitors.

Exam. Dishman: Well, the same statement was made in connection with the previous witness.

Any more questions, Mr. Rockwood?

Mr. Rockwood: Yes.

By Mr. Rockwood:

Q. If a car is rejected, Mr. Knutson, is it unloaded for inspection?

A. According to the west coast terms of purchase and sale, that is one of the requirements, and I'd say that in about 95 per cent of the cases that it is unloaded.

Q. So that, if a firm order were rejected on the Milwaukee and unloaded, which applies to 95 per cent of the cases, you couldn't divert from that point because the transportation contract has been completed, whatever the rate situation were, is that correct?

[fol. 1526] A. It might be.

Q. Well, isn't that a fact?

A. Well, I don't know. I'd have to find out.

Q. Suppose the customer of yours has an industry track upon which he receives deliveries of carloads of lumber,

if a car is delivered on that industry track, even though it is not unloaded, can you then divert that car to another destination if the customer doesn't want it?

A. Would you state that question again?

Mr. Rockwood: Read the question, please.

(Question read.)

The Witness: I can't answer that question. I'd like to point out though that in case of rejected cars most of the time you get notice of rejection prior to the arrival of the car. The customer gets the invoice and simply doesn't want the stock or grade or items. It's not what he wants.

By Mr. Rockwood:

Q. I take it then, when he gets the invoice for the car and sees the tally, he finds it's different from what he ordered?

A. Sometimes.

Q. And in that case, he says, "I just don't want the car." It's rolling. You can divert it?

A. We make whatever disposition we can out of it.

Q. If you were satisfied you had an order for that, and you knew the contents of the car were right, you might or [fol. 1527] might not insist that the customer take it?

A. I doubt if we would insist.

Q. Just for customer relations, you wouldn't insist, is that right?

A. That's right.

Q. Certainly, if he's a chap that you want future business from?

A. That's right.

Q. And that is the occasion for most of the rejections you have?

A. I wouldn't say most of them. Of course, I don't know, but I'd say that's one.

Q. That's one of the reasons?

A. One instance or reason why we have a rejected one.

Mr. Rockwood: That's all I have.

Mr. Torinus: I have no questions, Mr. Examiner.

Mr. Golden: No questions.

Mr. Boe: I have a question if the Examiner please.

Mr. James: I have none.

Mr. Hillman: No questions.

By Mr. Boe:

Q. Mr. Knutson, you testified at the previous hearing that your company covers the whole United States, including the east, southwest, some south, and some of the middle plains area.

Now, what states did you have in mind when you referred to the southwest?

A. California, New Mexico, Texas, Oklahoma.

[fol. 1528] Q. You included the area west of Texas in the southwest, did you, in California?

A. Including Texas. That's referred to as the southwest in our business.

Q. In other words, you include as far west as California in southwestern territory, as you described it here?

A. Right.

Q. Would any cars of your lumber move eastward from Eugene to Minnesota Transfer, do you know, and then to the southwest, meaning California?

A. No, not meaning California. The southwest, as I indicated there, includes Texas, New Mexico, Arizona, and, of course, it could move into Texas.

Q. Well, let me ask you then: As far as moving in the direction via the route I've shown, Minnesota Transfer, would your company bill cars from Eugene via Minnesota Transfer to Arizona?

A. No, we wouldn't.

Q. Well, how far west would you bill them if they were routed via Minnesota Transfer?

A. Well, we'd bill them as far west as the tariff would permit, provided we had a sale in that territory.

Q. Do you know how far west the tariff does permit you to do that?

A. No, I don't. I think it covers most of the state of Texas, but there might be parts of it left out of there.

[fol. 1529] Q. Do you—when you ship to the southwest, including the area of Texas and east of Texas, do you use the route of the Southern Pacific, Union Pacific, via Omaha?

A. Well, when you say when we ship to that territory, we ship, of course, before we sell on 75 to 80 per cent of our business, and we sell it wherever we can. If we have a sale in west Texas for a car that's approaching Minnesota Transfer, we find out first whether or not the car will go in there. So, I really can't answer your question on that.

Q. Well, the point is: Does your company use the route at all from Eugene of Southern Pacific, Union Pacific through Omaha to Texas? You do use that route too, don't you?

A. Sure.

Q. You know it's available?

A. SP, UP, yes.

Q. And as far as the area southwest—south of Omaha is concerned, do you know specifically the types of routes your company uses when it bills shipments to that area?

A. No, I couldn't tell you exactly.

Q. Do you know that there are numerous routes at the present time south and southwest of Omaha that you could use in shipping from Eugene?

A. Yes, I know there are many routes into that territory off the SP&S.

Q. Are there any routes to the southwest at the present [fol. 1530] time via Minnesota Transfer from Eugene to the southwest?

A. Southwest?

Q. I mean Texas and—

A. Texas, there would be, yes, but not the rest of the territory. California, of course, there is not or Arizona.

Q. Well, what about Arkansas and Louisiana? Are they in southwestern territory?

A. Well, I haven't drawn any line defining it.

Q. Don't you know that rate-wise Arkansas and Louisiana are included via routes west of the Mississippi River are included in southwestern territory?

A. No, I didn't know that.

Q. You didn't know that?

A. Southwestern territory in the vernacular of the railroads and the tariffs might be different than what I mean by southwest in the wholesale lumber business.

Q. You're using—southwest then in your testimony, are we to understand that you include as far west as the Pacific Ocean, including California and Arizona and New Mexico?

A. Let's be specific. Say Texas, New Mexico, Arizona, and California.

Q. You include all the area then in your testimony between the Mississippi River and the Pacific Ocean, south, say, of the Missouri River?

A. Like I say, Texas, Arizona, New Mexico and Cali-
[fol. 1531] fornia, to be more specific than that, I think.

Q. Well, I was just asking the question specifically as to territory in connection with possible railroad routes via Minnesota Transfer. Do you know where Minnesota Transfer is?

A. I have an idea.

Q. Do you know it's generally at St. Paul-Minneapolis?

A. In the area.

Q. In Minnesota?

A. That's my idea of where it's at.

Q. And that would be far removed from southern California, would it?

A. Yes, it would.

Q. You wouldn't ordinarily ship a shipment via Minnesota Transfer to—

A. It would be impossible.

Mr. Maguire: Just a moment, Mr. Knutson. Mr. Examiner, I think this is getting a little bit repetitive because Mr. Knutson has already testified that he did not expect to ship to any point west of a portion of Texas through Minnesota Transfer.

The Witness: That's right.

Mr. Maguire: Now, Mr. Boe is going over the same old thing.

Mr. Boe: I didn't understand I was going over the same old thing there. I was asking specifically as to whether or not he does ship or would ship a rolling car from Eugene, Oregon, to Minnesota Transfer and then to southern California.

[fol. 1532] Mr. Maguire: He has already answered that.

Exam. Dishman: You stated originally you didn't ship west of Texas?

The Witness: The answer is: Yes.
Mr. Boe: All right, I'll withdraw it.

By Mr. Boe:

Q. Your shipments that move via Minnesota Transfer, they may go to the south or central western territory? I mean by that the area west of the Mississippi River and north of the Missouri River.

A. State those boundaries again.

Q. Central western territory is the territory west of the Mississippi River and north of the Missouri River. Southwestern territory, that I'm referring to, is south of the Missouri River and west of the Mississippi River.

A. Well, the area you describe as west of the Mississippi and north of the Missouri takes in quite an area there, and, of course, we wouldn't ship a car to Minnesota Transfer and ship it back, but, generally, the area into which lumber would move, our going movements, our transfer would be anywhere east of there, of course, and south of there into west Texas as far as the rates will permit, through rates from the point of origin.

Q. As I understand, the volume of your business moves east of the Mississippi River, is that correct?

A. That's right.

Q. How does that compare with the volume west of the [fol. 1533] Mississippi River?

A. I have no idea. I couldn't tell you within 25 per cent.

Q. Would you say it's a substantial part of your business?

A. Well, what do you mean by "substantial"?

Q. Well, 50 per cent? As much as 50 per cent?

A. Well, I said I could not tell you within 25 per cent, one way or the other. That could mean 25 per cent east or 75 per cent east.

Q. Well, would you say that as much as 25 per cent of your company's business moves east of the Mississippi River?

A. Yes, I could safely say that.

Mr. Boe: That's all I have.
Exam. Dishman: Anything on redirect?
Mr. Maguire: Yes, I have just a couple of questions.

Redirect examination.

By Mr. Maguire:

Q. Mr. Knutson, when you once start a transit car, when it once starts moving, when do you commence your efforts to sell that car?

A. Immediately.

Q. Then let's take a car that is moving off the SP&S System, over either the Great Northern or Northern Pacific through Spokane, when that car is on its way up to Spokane, are you trying to sell it any place in the intermediate territory west of the transfer if you can do it?

A. Certainly.

[fol. 1534] Q. And when you get to the transfer, traveling over either one of the two northern lines, can you sell that car, so far as routing is concerned, anywhere in the eastern or southern or southwestern part of the United States?

A. That's right.

Q. Now, then—

A. To get back to my description of the—

Q. I remember your description of the southwest, that is, including a portion of Texas.

Now, then, if the rates available via the Northern Pacific or the Great Northern restricted the diversion of a transit car to points on the Northern Pacific or Great Northern, would your situation as to ready marketing of your lumber be just the same as it is now, or would it be hampered?

A. Would you state that question again?

Mr. Maguire: Would you read it, please?

(Question read.)

Mr. Torinus: Now, Mr. Examiner, I'll object to that question. There's no evidence that such a situation does exist. Why should this witness on redirect be requested to speculate about something that doesn't exist on the Great Northern or Northern Pacific and may never exist?

It seems to me we're getting far afield from redirect examination.

Mr. Maguire: Since Counsel has raised the question, I [fol. 1535] would be glad to answer that.

Mr. Torinus: I haven't directed any question to you, Mr. Maguire. I'm objecting to the question.

Mr. Maguire: I'd like to argue on the objection.

Exam. Dishman: Let the Counsel go ahead.

Mr. Maguire: Yes, the insinuation at least or the implication has been inherent throughout all of Mr. Rockwood's testimony that these present restricted rates via the Milwaukee via Spokane reasonably serve the purpose of this industry.

Now, then, I want to put the shoe on the other foot and see whether, if those same restrictions, which now are inherent in the routing via Spokane over the Milwaukee, were in existence over the Great Northern and Northern Pacific, whether he would be just as happy as he is now. Now, that's the purpose of that question.

I'm glad you brought it up.

Exam. Dishman: Does the witness understand the question?

The Witness: As I understand, he asked—oh, no—

Exam. Dishman: You don't understand it?

The Witness: I'm trying to formulate an answer.

Exam. Dishman: You don't understand his question?

The Witness: No.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: Back on the record.

[fol. 1536] Mr. Maguire: May I explain my question to the witness, Mr. Examiner, on the record?

Exam. Dishman: Yes.

By Mr. Maguire:

Q. What I am getting at: Mr. Rockwood has asked you some questions about whether or not, if there were routes through Spokane via the Milwaukee, that would be sufficient.

I'm asking you if you had the same limitations on the Northern Pacific and the Great Northern if you would be just as happy as you are now, the same limitations as to diversion as now exist via the Milwaukee?

A. No, I don't think so.

Q. Do you recall, Mr. Knutson, whether in my conversation with you last week I mentioned this demand which Mr. Rockwood has shown you?

A. Yes, I recall.

Mr. Maguire: I think that's all. Thank you.

Mr. Musenbrock: If the Examiner please, I'd like to ask a few questions on cross examination. I didn't have the opportunity. Redirect came in too fast.

Mr. Maguire: I'm sorry, Mr. Musenbrock.

Exam. Dishman: Proceed.

Further cross examination.

By Mr. Musenbrock:

Q. Mr. Knutson, in your former testimony here at Spokane—at Portland, you stated that, if the new rates were [fol. 1237] put into effect in pursuance of this complaint, it would generally open up further sales territory for your company, and, amongst other states, you mentioned Iowa.

Mr. Maguire: Would you refer to the page of the transcript?

Mr. Musenbrock: 369 and 370.

By Mr. Musenbrock:

Q. Now, Mr. Knutson, would you explain or would you care to explain how the initiation of through routes via the Milwaukee over Spokane will open up new sales territory in Iowa over the present existence?

A. I'm not too familiar with the exact way the lines run down there. Maybe Iowa should not have been included. What I had particular reference to was the state of South Dakota and parts of Minnesota, that—

Q. I see.

A. —that are served by the Milwaukee only.

Q. Insofar as Iowa is a potential sales territory, that wouldn't be improved by any new rates or routes via the Milwaukee through Spokane?

A. I don't say that it wouldn't be. I'll say that I don't know whether it would or not because I'm not looking at the map, and I can't see the information there. That's a minor point, anyhow. The principal areas we would concentrate on would be South Dakota and Minnesota and points served by the Milwaukee only.

Q. But it would still be a point, whether it's minor or major?

A. That's right.

[fol. 1538] Q. So, it would be important to you as a minor point?

A. Yes.

Q. Well, now, isn't it true that at the present time, Mr. Knutson, you can forward these transit roller cars to Iowa via Minnesota Transfer, and then with connection with the Milwaukee into Iowa at the through rates?

A. That's right.

Q. To what advantage would a single factor through rate over Spokane via the Milwaukee, and excluding the northern lines, help you on this Iowa trade territory?

A. It would be very minor. That was already brought out.

Q. Well, I'm looking at it from a rate standpoint now. Is there any way that it could help you over what it is at the present time?

A. No, I can't think of any way right now.

Mr. Musenbrock: Thank you.

Mr. Maguire: Nothing on redirect.

Exam. Dishman: That's all. The witness is excused.

(Witness excused.)

Mr. Maguire: The next witness will be Mr. Kenneth Lovegren. His testimony appears on—commences on Page 480 of the transcript. That's Kenneth W. Lovegren.

KENNETH W. LOVEGREN having been previously sworn, was recalled for further cross examination and testified as follows:

[fol. 1539] Cross examination.

By Mr. Rockwood:

Q. Mr. Lovegren, I might tell you my cross examination is going to be very short.

Did Mr. Maguire ever show you a copy of Pages 17 and 18 of what is known in the record as Exhibit 17? I show you those two pages that I'm referring to.

A. No, I haven't seen them.

Q. Did Mr. Maguire or anybody speaking for the Milwaukee ever discuss with you the possibility of your giving data similar to the nature described here?

A. Yes.

Q. Whom did you discuss it with?

A. Mr. Maguire.

Q. With Mr. Maguire, but you didn't see the sheets?

A. I didn't see the sheets, but he covered pretty much what's on there, I can see.

Q. Are the records of Lovegren Lumber Company in existence from which the data described in those two pages could be prepared?

A. Yes.

Q. First, let me ask you: How many cars a year do you ship?

A. Between two and three hundred cars a month.

Q. Close to 2,500 to 3,000 a year?

A. Yes.

Q. Well, if that is true then, the request in this Exhibit 17 was limited to data for six specific weeks in the year 1953, [fol. 1540] six weeks out of a year, which would be less than or in the neighborhood of one-eighth of an annual year's business, or, coming down to cars, somewhere between three and four hundred cars for which we ask the data.

How long would it take one of your staff to prepare that data?

A. It would take a number of days. We don't file by date. We would have to go through quite a number of cars in

order to determine which cars were in any particular date period.

Q. I'm not asking you for details of your business, but do you file by customers, file by accounts, rather than by dates, or file by railroads, or what is the nature of the segregation of these freight bills in your records?

A. By customer.

Q. And you would have to go through files of all customers in order to pick it out for these dates?

A. That's right.

Q. And it would take several days to do that?

A. More than several, I'm afraid.

Q. Would you have any objection to furnishing that data if it could be prepared without too much expense?

A. Yes, I would.

Q. Why?

A. Because I feel it would divulge information publicly, which might be damaging from a competitive standpoint.

[fol. 1541] Q. You realize I'm not asking you for names of customers? I'm asking you for destinations. Do you think the disclosure of destinations or the disclosure of origins would be injurious to your business?

A. Yes.

Mr. Rockwood: That's all I have of Mr. Lovegren—oh, I—yes, that's all.

Mr. Boe: I have just a question of this gentleman.

By Mr. Boe:

Q. I notice in your previous testimony, Mr. Lovegren, that you refer to the area of the southwest, Texas and the southwest as served by you. What specific states did you have in mind when you said "southwest" in that testimony, previous testimony?

A. We think of the southwest in our business as being New Mexico, Arizona, Texas, that area.

Q. You heard the previous witness testify, did you? He included in the southwest California.

A. We do not.

Q. You do not include southern California in southwestern territory in connection with your operation?

A. Right.

Q. Now, when you ship to the areas, such as Texas, New Mexico, and Arizona, how does that ordinarily come down? Through Southern Pacific, Union Pacific, or does it go via Northern Pacific or Great Northern to Minnesota Transfer? [fol. 1542] A. Some goes via Southern Pacific, Union Pacific. Some goes via SP, D&RGW, MP; some via northern lines into the western part—rather, the eastern part of Texas when it comes through the Portland way. West Texas points and Arizona and New Mexico are not reached by Minnesota Transfer.

Q. Well, now, Oklahoma City, for instance, do you know about where that's located, I take it?

A. Yes.

Q. Does your company serve Oklahoma City?

A. Yes.

Q. And via what route would you ordinarily ship to Oklahoma City?

A. All routes available, depending on origin of the car, what lines we wanted to favor.

Q. Well, I'm primarily interested in the routes in connection with that question, whether you ship it through Minnesota Transfer, or whether you ship it via Southern Pacific, Union Pacific to Omaha.

A. We would ship both of those, plus other possibilities.

Q. Now, as I understand from your previous testimony, your firm operates a business in two fashions.

Mr. Maguire: I'm sorry, Mr. Boe, it's hard for me to hear you over here. I wonder if you could raise your voice.

Mr. Boe: I'll try to, Mr. Maguire.

By Mr. Boe:

Q. In your previous testimony, Mr. Lovegren, you said that 25 to 50 per cent of your business is firm business, [fol. 1543] depending on the time of the year. Now, would that also hold good as far as southwestern territory is concerned?

A. Now, you're speaking of railroad designation when you speak of southwestern territory?

Q. I'm speaking—yes, I'll say I am, namely, the area generally east of New Mexico and Arizona, including Texas and Oklahoma.

A. The percentages would be fairly constant throughout the entire United States.

Exam. Dishman: Mr. Witness, at this point, would you for the benefit of the record just explain what you mean by firm business? It's probably in the record, but I want to make sure.

The Witness: Firm business is that business that we have an order for before the car is shipped and shipped to a specific destination in the original billing.

Exam. Dishman: As distinguished from a car that you start out before the contents are sold, is that right? Before the shipment is sold, you start a car before you have a buyer, is that right?

The Witness: That is our transit business.

Exam. Dishman: Distinguished from that then, you mean firm orders?

The Witness: That is correct.

By Mr. Boe:

Q. Now, as I understood your testimony in the original hearing, Mr. Lovegren, you also ship to the south territory, or southern territory, is that correct?

[fol. 1544] A. Right.

Q. Where is your dividing line between the southwestern territory and southern territory in that description?

Mr. Maguire: That's repetitive cross examination, Mr. Examiner. The answer to that question shows as to the deep south on the bottom of Page 482 of the transcript.

Mr. Rockwood: That wasn't any cross examination by this Counsel.

Mr. Maguire: Nevertheless, it's been answered in cross examination, regardless of who asked the question.

Mr. Rockwood: Does Counsel take the position that anything I ask cannot be discussed by Counsel for these other defendants?

Mr. Maguire: No. I take the position that, where the

identical question has been answered before by a witness, it's repetitive cross examination, regardless of who asks it.

Mr. Boe: I want to make this point too, Mr. Examiner. The defendants I represent are new defendants. I was not present. They were not represented at the prvious hearing. I have no idea of what the purpose of Counsel was in cross examination, and I think I have the right to develop in my own way what this witness might have meant in answering a certain question, and I'm not going to be bound by previous cross examination. I don't think I should be.

Mr. Maguire: He's asking the same question, Mr. Examiner, which has been answered before.

[fol. 1545] Mr. Boe: I'm not asking the same question.

Exam. Dishman: Well, if you're not asking the same question, you might look on that page, Mr. Boe.

Mr. Boe: I did look at it. My question is not similar to Counsel's question.

Exam. Dishman: Well, do you understand the question, Mr. Witness?

The Witness: What is the question?

Exam. Dishman: Maybe you had better repeat it, Mr. Boe.

By Mr. Boe:

Q. My question was where you divided the southern territory and the southwestern territory in the light of your present testimony that you've given since I've cross examined you.

Exam. Dishman: On Page 482, the question there has to do with the deep south. You're asking now as to southern territory?

Mr. Boe: And southwestern territory in the light of his present testimony; not what he testified to last June.

Exam. Dishman: Go ahead, Mr. Witness.

The Witness: We divide at the eastern border of Texas and Oklahoma. We consider for our purposes Louisiana, Mississippi, and all the other southern states as being a southern state, our southern territory.

Mr. Boe: That's all I had, Mr. Examiner.

Mr. James: May I ask just a question or two, please?

[fol. 1546] Exam. Dishman: Yes, Mr. James.

By Mr. James:

Q. You said to Mr. Boe that you did have routes to Texas points via Omaha, I think SP routing and Union Pacific, among others. Will you name what the others are that you have in mind?

A. To?

Q. To Texas.

A. To Texas.

Q. And to Oklahoma City.

A. Other possible routings would be SP, D&RGW, possibly—there's quite a number of possibilities. There's Missouri Pacific. We could go SP all the way into Texas, or we could take other lines; OE, SP&S, GN or NP, and then go south to some points in Texas.

Q. You have used all of those routes at times, have you?

A. We use all of those routes at times.

Q. If you had a route via the Milwaukee, would you use that route to ship to the southwest, Oklahoma City and Texas points, via Minnesota Transfer?

A. I believe to some of those points routings are available via the Milwaukee.

Q. Via Minnesota Transfer?

A. Yes.

Mr. James: That's all. Thank you.

Mr. Rockwood: May I ask a question right in there?

[fol. 1547] By Mr. Rockwood:

Q. Do you mean from SP&S origin points, or do you mean from some other origin points?

A. Definitely from Washington points on the Milwaukee, GN or NP.

Q. And would you use—I don't know, I'm just trying to learn something—from GN or NP points, could you move via the Milwaukee, Minnesota Transfer, and thence to Texas?

A. We don't originate very many cars up there. I'm not too familiar with that territory.

Q. But from Milwaukee origin points in the state of Washington?

A. Yes.

Q. Your impression is that you could move to the transfer and thence to the southwest by connections?

A. That's my impression.

Q. But not from SP&S origin points?

A. There's a line through there, I'm not familiar with the exact location, of points that you can reach, east of a certain line in the south via SP&S, OE.

Q. That would be the northern lines to Minnesota Transfer and thence Milwaukee out of Minnesota Transfer, but not via the Milwaukee via Spokane and Minnesota Transfer and thence south to Texas? You couldn't do that, could you, on lumber from SP&S origin points?

A. Would you repeat that, please?

Q. Well, do you recall Exhibit No. 9 put in by the Milwaukee that shows the Milwaukee rates on lumber from [fol. 1548] SP&S points generally to points east of Spokane apply only to Milwaukee local destinations east of Mobridge, South Dakota, without the right of diversion off the Milwaukee to the Milwaukee connection? Did you ever see that map?

A. I believe I have, but I don't recall it very clearly.

Mr. Rockwood: I have nothing further.

Mr. James: May I ask just one more question?

Exam. Dishman: Yes.

By Mr. James:

Q. Assuming you have or were to have rates via the Milwaukee and a car was moving from an SP&S origin eastward, and for some reason you wanted to divert that to, say, Oklahoma City or some such point, would you still sell your car—send your car by way of Minnesota Transfer and then back to Oklahoma or Texas, or would you divert it over some other route?

A. Our transit cars are billed to a transfer point, all of them, a point which we feel gives us the greatest territory for sale. Minnesota Transfer is one of those points.

Q. That's your answer to my question, is that correct?

Mr. Maguire: That was the answer he gave you, Mr. James.

By Mr. James:

Q. That's what I'm to take as your answer? Is that as fully as you can answer it, I should say?

Mr. Maguire: Well, now, Mr. Examiner—

Mr. James: I think it's a proper question.

Mr. Maguire: I've got a right to object.

Mr. James: The witness did not answer my question. [fol. 1549] Maybe he can't. I want him to say so if that's the fact.

Exam. Dishman: You can state whether that's your complete answer or not. Is it?

Mr. Maguire: Had you finished answering the question? That is what he is asking you.

Mr. James: Yes.

The Witness: What was your question again?

By Mr. James:

Q. I stated a hypothetical case and asked you, whether, under those circumstances, while the car was on its way east, say, in Montana or North Dakota, if it became desirable to send it by diversion to divert it to Oklahoma City or to some point in Texas, would you let it go all the way through to Minnesota Transfer, thence to the destination direct, if you know?

A. We make diversion as soon after sale as possible, and many times the car will not go through or reach the diversion point.

Q. That is, you will divert it at a place that will permit you to get it on to destination more quickly, is that correct?

A. That's right.

Q. That's what you would do here, is that true, even if you had through rates over the Milwaukee via Minnesota Transfer if you were able to do so?

A. If we had through rates via the Milwaukee the same as we do via the Northern Pacific and GN, we would.

Q. Do you know whether there are any tariffs publishing [fol. 1550] such rates?

A. There are some points that can't be reached via the Milwaukee, yes, as I understand it.

Mr. James: That's all.

Mr. Torinus: I have some questions of this witness on the point that Mr. James was developing.

By Mr. Torinus:

Q. You now have routes to Texas, as I understand, from points on the Oregon Electric, which would apply Oregon Electric, Portland, SP&S, Spokane, Great Northern or Northern Pacific to Minnesota Transfer, thence some line, the Omaha or the Rock Island to the southwest and to Texas, isn't that correct?

A. Yes.

Q. Now, should the Milwaukee prayer be granted and rates be established from Oregon Electric points which would apply to—from some point on the Oregon Electric via OE, SP&S, Spokane, thence Milwaukee, Minnesota Transfer, thence Rock Island or CStPM&O to the southwest, would you utilize the routes of the CStPM&O and Rock Island beyond Minnesota Transfer to the southwest?

A. We would use them as much as we do now as far as the lines beyond Minnesota Transfer are concerned; the C&NW give us good service, and we would probably intend to give them a good share. We would give some to the CB&Q. We've got lots of them at Chicago.

[fol. 1551] Q. I'm talking about Texas. I have one further question.

A. We would use—my answer is: We would use the lines which we have been using up to now. There's no reason to change, depending on the service that they give us.

Q. I have one further question in that connection. You realize, do you not, that the Milwaukee has a line which extends from Spokane as far as Aberdeen, thence Aberdeen down through Yankton, Sioux City, into Omaha, where it makes connections with other lines for service to the southwest? Do you understand that?

A. Yes.

Q. In the event you started a roller car on the Milwaukee, you started, rather, on the OE, SP&S a roller car

that was rolling over the Milwaukee east of Spokane, and it was diverted to Texas, and you desired to get it down to Texas quickly, would you give consideration to diverting that car to Texas via the Omaha gateway of the Milwaukee, rather than Minnesota Transfer gateway?

A. We would use the gateway which seemed to serve our purpose best. Sometimes the customer doesn't particularly care if the car gets there in any length of time. If we sold it early enough, we would ship it Laurel, Q.

Q. Now, just a minute. You're getting beyond the scope of the question. Let me ask you another question. Suppose you had a customer in Texas with whom you made a sale, who specified routing Milwaukee, Omaha, thence Missouri Pacific, or a southern connection of the Milwaukee at Omaha. Would you divert that car thence Omaha, Mis- [fol. 1552] souri Pacific?

A. We would follow our customers instructions if he gave specific instructions. Most times they don't.

Q. To that extent, your shipment would deprive the North Western and the Rock Island and the other lines that now connect with the Great Northern and Northern Pacific at Minnesota Transfer of their maximum haul on such a shipment under existing routes, isn't that correct?

A. We try to divide our business up among those lines. I don't believe that such a situation would be detrimental to the other lines moving down.

Q. But to the extent you had a customer in Texas, who for some reason of his own specified a routing via the Omaha gateway, as I understand you, you would follow that customer's specific direction on the route?

A. Yes, but probably only about one per cent of the customers specify any other line but the delivering line. It's very small.

Q. Well, suppose the customer specified Missouri Pacific.

A. As the delivery line?

Q. Well, suppose the customer specified Milwaukee, Omaha, and Missouri Pacific. Then, as I understand it, you would utilize the Omaha gateway?

Exam. Dishman: Well, as I understood the witness, he'd follow the instructions. Isn't that right? You'd ship it the way the purchaser wanted you to ship it, wouldn't you?

[fol. 1553] The Witness: That's right.

Mr. Torinus: That's all. I have no further questions.

By Mr. Musenbrock:

Q. Mr. Lovegren, from your former testimony, you stated you deal in transit cars: Now, you also stated that your marketing area is the whole United States, including central United States. You also stated that you don't route transit cars over the Milwaukee and SP&S because of the tough situation you might find yourself in, and then in answer to a question by Mr. Maguire, you stated you needed these rates proposed to be set up under this proposal.

Now, as to your trade territory in Iowa and southern Minnesota south of the Twin Cities, in what respect would you need this proposal to give you something as to transit cars that you do not have at the present time, having in mind that at the present time you have through rates over the northern lines, Minnesota Transfer, and connections south into southern Minnesota and Iowa?

A. I'm trying to digest your question.

Q. Should I go over it piecemeal for you, Mr. Lovegren?

A. If you will, please.

Q. At the present time, you have on these transit cars—you have a through rate into Iowa and southern Minnesota via the transfer, the two northern lines with the connection, that's right, isn't it?

A. That's correct.

[fol. 1554] Q. And you have transit and diversion privileges on those through rates in Iowa and southern Minnesota?

A. That's right.

Q. Now, if I understand the proposal of the Milwaukee correctly, they want the same kind of a rate into Iowa and southern Minnesota, only it would then be a single factor or a single line rate. That's your understanding also of it, isn't it?

A. Yes.

Q. That is, out of Spokane, is that correct?

A. I believe so, equal to the other two lines.

Q. That's right, same privileges.

A. Same privileges.

Q. Nothing more, nothing less, same privileges?

A. Right.

Q. Well, as to your market area then in Iowa and southern Minnesota, what would this proposal give you beyond what you already have on the connections out of the Twin Cities in Iowa and southern Minnesota, such as the North Western Railroad, or Rock Island, the M&STL, the Great Western, the IC, and so forth, including the Milwaukee and that group too? They're a party to that rate out of the Twin Cities.

A. One thing it would give us: It would give our rate department—

Q. I beg your pardon. It would give you what?

A. —our rate and routing girl—department—a much [fol. 1555] easier time in figuring out routings through that area; using Milwaukee, there wouldn't be as many exceptions.

Q. Anything else?

A. We can reach some of those points that you're talking about via the Milwaukee now.

Q. That's right.

A. However, many of the restrictions are west.

Q. Is that about it?

A. It boils down to the fact that we wish exactly the same thing as we have over the Northern Pacific and Great Northern.

Q. Except you want it on a single line proposition, don't you?

A. All three lines.

Q. Well, I mean single line—I'm ahead of myself—I mean single line out of Spokane into this destination territory? It would be Milwaukee all the way through from Spokane?

A. Not necessarily.

Q. Well, now, wait a minute. I don't want to get ahead of myself, and I don't want you to get ahead of yourself.

A. I think I answered previously that it is our policy to use other railroads, and we don't necessarily use one railroad clear through to destination.

Q. But, Mr. Lovegren, I asked you what privilege you would be accorded by a new single factor rate setup over

the Milwaukee over what you have at the present time, and you could think of only one thing and that was convenience [fol. 1556] to your rate and routing department because they would only have a single railroad to deal with and they wouldn't have to worry about numerous exceptions.

Mr. Maguire: I don't accept that as a statement of Mr. Lovegren's testimony.

Mr. Musenbrock: He just got through stating it.

Mr. Maguire: I think the record will speak for itself on that.

Exam. Dishman: Do you understand that, Mr. Lovegren? Is that what you said, or did you say something different?

The Witness: Convenience is only one factor.

By Mr. Musenbrock:

Q. Well, then, let's go back to my original question. Are there any other factors? You only mentioned convenience.

A. It depends on the area which we're routing through and the destination.

Q. I'm still speaking of Iowa and southern Minnesota as destination territory.

A. That area isn't our big problem.

Q. In your direct testimony, you stated as part of your marketing territory—

A. It is part of our marketing territory.

Q. All right. So, to that extent, it's important to you. Now, again I repeat: What privileges and advantages would you get under a new Milwaukee single factor rate [fol. 1557] setup that you do not have at the present time in connection with the railroads out of the Twin Cities gateway of the northern lines?

A. To that area?

Q. To that area.

Mr. Maguire: Now, just a moment before you answer, Mr. Lovegren.

Mr. Examiner, I submit that this question is based upon a misconception of the issues in this case. We are not ask-

ing for a single factor rate necessarily through to Iowa or southern Minnesota. We are asking for rates which will give the shipper the right to divert off our line and will have the final destination territory that is now enjoyed or accorded by the SP&S, Great Northern and Northern Pacific, and, contrary to Counsel's conception of it that we're asking only for single factor rates, we have made it clear in our complaint that we do not intend to disturb or close up the open routing that now exists with other lines, including Counsel's line, east of the so-called eastern gateways, which is the Missouri River and Mississippi River gateways.

So that this single factor element is not the thing that we are seeking here. The only thing we're seeking—we're willing to give open routing, and I think maybe Counsel, due to the fact that he is more recently in the case, it has not occurred to him. I think that should be brought out.

Exam. Dishman: With that explanation, does that change [Vol. 1558] —does that clarify it?

Mr. Musenbrock: Not a bit. I don't accept it. His own witness, Mr. Engel, stated this was a single factor rate, and I refer you to Page 88 of the transcript. I understand, I think, rates fairly well.

Exam. Dishman: Page 88 of the transcript?

Mr. Musenbrock: That's right.

Exam. Dishman: This witness?

Mr. Musenbrock: Mr. Engel, their expert witness.

By Mr. Musenbrock:

Q. Again I go back to you, Mr. Lovegren—

Mr. Maguire: Now, just a minute. I want to finish this up. I'm looking at Page 88, and the only reference to single factor rates is in the second paragraph—that is, the first whole paragraph on Page 88, where it is said:

"Effective September 10, 1913, single factor joint through rates via Spokane were established on lumber and other forest products from shipping points on the SP&S Railway, O.E. Railway and O.T. Railway . . . to local destination territory on the Milwaukee east of Mobridge, South Dakota . . ."

I have left out a few words there. Now, this has nothing whatever to do with single factor rates. It's a historical recital there. It has no reference to any single factor rates being sought east of the Missouri or Mississippi River gateways.

Mr. Musenbrock: Well, Mr. Maguire, then is it, your idea that what you have at the present time is equivalent [fol. 1559] of what you are asking for in the complaint?

Mr. Maguire: No.

Mr. Musenbrock: Well, then, let's go into what he doesn't have now, and what he will have.

Mr. Maguire: All right, but single factor rates are not what we're asking for.

Mr. Musenbrock: You're asking for a rate the same as the GN and the Northern Pacific here, which is a single factor rate from Spokane. It may be a joint rate with the SP&S, but, as to the Milwaukee, it's a single factor rate to all of your points on your system with rights of diversion and transit as explained by your Mr. Engel.

Mr. Maguire: Yes, and with open routing through the Missouri River gateway.

Mr. Musenbrock: Certainly.

Mr. Maguire: Now, so long as you understand, the witness understands, and I understand, then we're all agreeable.

Mr. Musenbrock: I think the witness and I understand what you're talking about.

Mr. Maguire: I'm not so sure about that.

Exam. Dishman: Proceed with the questioning.

Mr. Maguire: With no reflections on the questioner.

Mr. Musenbrock: Yes.

By Mr. Musenbrock:

Q. So, at the present time, you have joint through rates with the GN over the Minnesota Transfer gateway into [fol. 1560] Iowa and southern Minnesota?

A. Yes.

Q. Now, the effect of this proposal of the Milwaukee here would be to give you the same kind of rates, but over the single line of the Milwaukee through the transfer gate-

way into Iowa and southern Minnesota with the same kind of privileges as to transit and reconsignment, diversion, and, in case of rejected shipments, to other points on that system.

Now, the Milwaukee is also, according to the present tariff of the GN and Northern Pacific, south of the Twin Cities gateway, so, into this Iowa and southern Minnesota territories, what would you get under the new proposal of the Milwaukee here that you do not have at the present time as to transit cars that are looking for a home?

A. I think I stated before that the area you're talking about is not really our problem because we can reach in there.

Q. Well, I'm only accepting your direct statement here last June that it is part of your territory. That's all I can go by. Now, if you want to amend that and say that, as far as your company is concerned, Iowa and southern Minnesota is unimportant—

A. You misunderstand me. Of course, that territory is important to us as far as our sales are concerned, but, as far as our routing problems are concerned, it's not as important as further west, as far as the Milwaukee is concerned.

Q. Well, isn't the routing problem as much—I didn't [fol. 1561] quite follow you. I didn't get what you had in mind there. Why isn't the routing problem so important to you, or why is the routing problem so important to you, or did I misunderstand you?

A. If we should move a car Milwaukee, our diversion to a large area of the United States is restricted.

Q. Well, wait a minute now, Mr. Lovegren.

A. If we move northern lines, it isn't.

Q. I know, but I'm trying to keep out these questions the other parts of the United States, aside from Iowa and southern Minnesota. I'm speaking of that as destination territory, not necessarily diversion territory to go to the eastern seaboard.

A. I tried to tell you that we can reach into those areas on the Milwaukee through the Minnesota Transfer.

Q. At the present setup, that's right. What would you get under a single factor rate where the Milwaukee hauls

it all the way from Spokane to the transfer and gives you the same kind of service that they're giving you presently in connection with the GN and NP?

A. It depends on whether you're speaking of transit shipments or mill shipments. Transit, we must divert. We don't dare put a car in transit on the Milwaukee because we can't divert off.

Q. That is west of the Twin Cities gateway. You can have such a car on the Milwaukee south of the gateway, can't you, just like you do with other of these connections, [fol. 1562] but, west of the gateway between Spokane and the Twin Cities transfer, or Minnesota Transfer, you're restricted as to the Milwaukee? You're in the pocket that you spoke of, but you're not in that pocket south of the Minnesota Transfer, are you?

A. It's the pockets that we want to eliminate.

Q. But there's no pockets south of the transfer when you're on the Milwaukee moving on the joint through rate of the GN or NP in connection with the Milwaukee?

A. If you say so.

Q. I'm trying to find out your troubles. You came here to testify in favor of this complaint, Mr. Lovegren, and my railroad is interested in that Iowa and southern Minnesota territory, and going back to that question of convenience to your rate and routing department, that they would have a single railroad to deal with with no exceptions, you don't anticipate, I would judge from what you stated to these other gentlemen here, that that would lessen the commerce and the cars that these other railroads and I will now handle if the Milwaukee came in as a single line?

A. As stated before, the customer requests the delivery line.

Q. Well, we're talking about these cars that don't have customers yet. They're looking for one.

A. Oh, well, we would bill those to Minnesota Transfer or some other diversion point, such as Council Bluffs or Topeka.

Q. You wouldn't need the Milwaukee to get to Minnesota Transfer. This new rate wouldn't help you. You've already [fol. 1563] got one there. So, it would be of no utility to you in that respect, would it?

A. The Milwaukee, because of the rate structure, cannot give us the same service as the Northern Pacific and Great Northern. We would like to use the Milwaukee, as well as the Great Northern and Northern Pacific. There's no competition there. The Milwaukee can't compete.

Q. I understand that, but take that car that you're using Minnesota Transfer as a diversion point on. You're interested in a point beyond Minnesota Transfer, are you not?

A. Not always.

Q. Not this side of Minnesota Transfer?

A. We're interested in where we can sell it.

Q. This side? That is, between Spokane and Minnesota Transfer?

A. We sell cars all over the United States.

Q. I submit that you didn't answer my question there. If I'm confusing, I'll change it, but—

A. We do sell cars east of—west of the Minnesota Transfer.

Q. Between Spokane and Minnesota Transfer?

A. Right.

Q. But as to those cars still looking for homes south of the transfer, you have all of the present conveniences and facilities necessary to enable you to sell those cars even in connection with the Milwaukee, isn't that so?

A. I believe I said that before.

Q. Yes, and you won't get anything in addition under [fol. 1564] this proposal of the Milwaukee so far as those cars are concerned in Iowa and Southern Minnesota?

A. I don't believe so.

Mr. Musenbrock: That's all.

Mr. Hillman: I have a question.

By Mr. Hillman:

Q. Mr. Lovegren, do you sell any lumber that does not originate in the state of Oregon?

A. Yes.

Q. Do you sell any from Washington?

A. We ship out of Idaho some.

Q. Do you ship out of any points on which the Chicago, Milwaukee is the originating carrier in Idaho?

A. No.

Q. Idaho is the only state other than Oregon, from which you do ship?

A. We have on occasion shipped from Washington; not too much.

Q. In the recent past?

A. By recent past, the past few months?

Q. I mean the past year or so.

A. Yes.

Q. And as to those shipments from the state of Washington, have they been in any case from points at which the Milwaukee is the originating carrier?

A. No.

Mr. Hillman: In that event, I have no further questions.

[fol. 1565] Mr. Golden: I have a question.

By Mr. Golden:

Q. I'm rather intrigued by your inference that you would take a car away from the Milwaukee, moving on the Milwaukee into the transfer, and give it to another of the Western Trunk Lines, even though the Milwaukee might be going to the same destination. Why would you do that?

A. Midwestern Trunk Lines? You mean the C&NW, the CB&Q?

Q. That's right, those lines.

A. I stated previously that the requested delivery line would make some difference with how we would route it.

Q. If you had a car moving into the transfer by the Milwaukee and it ultimately developed that its destination was Milwaukee, would there be any reason for you to divert that car from the Milwaukee to another line?

A. No, if the delivery line were the Milwaukee.

Exam. Dishman: You wouldn't do it unless the shipper requested it, is that right?

The Witness: If the shipper requested Milwaukee, we would route Milwaukee.

Exam. Dishman: And if they requested some other line, you would change it?

The Witness: If the customer requested a change to some other delivery line, we would route it that way. If we

had our choice from Minnesota Transfer, we would probably use—going to Chicago, we'd probably use the Soo or the CB&Q or the C&NW, so as to favor those lines who [fol. 1566] have been giving us good service.

By Mr. Golden:

Q. In other words, you would take a car away from the Milwaukee then at the transfer?

A. In all probability, yes.

Q. Because the other lines give you good service?

A. Is that a good reason?

Q. That's good reason. I'm asking you if that's it.

A. The C&NW is a case in point. They give us good service.

Q. The inference being that it's better service than the Milwaukee, is that it?

A. No. We divide our business up.

Q. You just like to be a good fellow and divide your business up between the railroads because they happen to be there, is that it?

Mr. Maguire: I submit, Mr. Examiner, that the witness has answered that question. It's been pretty well explained, and I think that last question is frivolous.

Exam. Dishman: It seems like we have been over that subject quite a bit.

Mr. Golden: Can I have an answer to that question?

Mr. Maguire: I've objected to it.

Mr. Golden: I asked him the question if he liked the carriers because they happened to be there.

Mr. Maguire: Because he was a "good fellow" is the question I was referring to. I say that's a frivolous question.

[fol. 1567] Exam. Dishman: I think the witness has covered that.

Mr. Golden: Not that.

Exam. Dishman: Have you covered that?

The Witness: I thought I had.

By Mr. Golden:

Q. Well, is that true? Is my understanding correct? Is that true?

A. Many factors are in it; service, as I mentioned.

Exam. Dishman: Well, didn't you state it's your policy to divide up your business?

The Witness: Yes.

By Mr. Golden:

Q. In this case, would you for the same reason now divide up your business between the Great Northern, Northern Pacific and the Milwaukee east of Spokane to Minnesota Transfer, if the Milwaukee should be successful in this case?

A. Yes.

Q. And you would do so?

A. Yes, we would.

Mr. Golden: That's all.

The Witness: It would depend on service.

Mr. Rockwood: May I ask one with the Examiner's permission?

Exam. Dishman: Yes.

By Mr. Rockwood:

Q. You remarked a few minutes ago that there was no competition between the roads now existing. Do you consider the Great Northern and Northern Pacific as a unit, non-competitive?

[fol. 1568] A. No. They're competitive.

Q. There's plenty of competition between Spokane and the transfer right now on the Northern Pacific and Great Northern, isn't there?

A. They send their representatives to our office.

Q. And on all cars from mills served likewise by the Southern Pacific or Union Pacific, there's plenty of competition on that traffic, isn't there, other than the Great Northern and Northern Pacific?

A. Yes, there is competition.

Q. So, there's a whole lot of competition, and you don't need the Milwaukee in order to create competition? The most you can say is you need the Milwaukee to increase competition, isn't that true?

A. It might improve the service of Northern Pacific and Great Northern.

Q. It might, but what basis have you for saying that it would?

Exam. Dishman: Well, you didn't say definitely that it would.

The Witness: That's right.

Mr. Rockwood: The inference in his answer was that it would. Now, I'm asking him if he has any basis.

Exam. Dishman: He said it might.

The Witness: Yes.

Mr. Rockwood: I know. That's what I'm examining on.

By Mr. Rockwood:

Q. Have you any basis in fact for a belief that it would [fol. 1569] improve the service of the Great Northern and Northern Pacific, or the Union Pacific, or the Southern Pacific?

A. I've noticed that, whenever one line has come up with a favorable transit routing, that the other lines have tried to compete with them.

Q. What do you mean by a favorable transit routing?

A. One that will give us the connections and the service that we wish.

Q. Well, give an example of what you have noticed of a favorable transit routing. Give us one example, please, so we'll know what we're speaking of.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

We will recess now for lunch until 2:00 p.m.

(Whereupon, at 12:35 p.m., a recess was taken until 2:00 p.m.)

[fol. 1570] AFTERNOON SESSION

2:00 p.m.

Exam. Dishman: The hearing will be resumed, gentlemen.

Will you read the last question, please?

(Question read.)

The Witness: What I mean by a favorable transit routing depends upon several factors. One, of course, is the location of the diversion point. We must have one that reaches the maximum of area and still as far east as possible, giving us some time to sell.

Other factors that enter into a favorable transit routing are the connections at the diversion point, how fast the connections will take it from the interchange and move it on to our point of sale. Other factors are the service of the home office. Some offices have opening hours corresponding with our office. A case in point is the summertime when we are on daylight time. We start at 7:00 in the morning. There are many occasions where we wish to use the services of railroads before 8 o'clock, and those offices that open or are open at our time would tend to make that a favorable transit routing, also noon hours. We also use the services of the railroads during noon hours.

Another factor is whether they have a good rate man available or not. We're not experts in rates, and sometimes we have to know fast whether we can route to a certain destination. Occasionally we've been called—we have called them, while the customer is still on the telephone or [fol. 1571] teletype, and get the information, and, if the services of the railroad local office do not include that, that is a factor as to when it's a favorable transit routing or not.

By Mr. Rockwood:

Q. Now, with that description that you have given of what you have in mind as a favorable transit routing, will you give us an example now of a favorable transit routing which resulted from competition between carriers?

A. The Union Pacific, their offices are open at 7:00 during the daylight time, and at least you can generally get infor-

mation very quickly. They handle your diversions, and they have good connections at Omaha and Council Bluffs.

Q. What is the routing of the Union Pacific that you consider as a favorable transit routing?

A. It's just SP, UP.

Q. Where to?

A. Oh, Council Bluffs, I'm sorry.

Q. Direct to Council Bluffs?

A. No. I believe that's through Denver.

Q. And thence to Council Bluffs?

A. Yes.

Q. What are the intermediate carriers between Eugene—say it's on the Southern Pacific—and Denver?

A. Just the Southern Pacific and Union Pacific.

Q. Is Denver on the main line of the Union Pacific to Council Bluffs?

[fol. 1572]. A. I don't know what they consider their main line, but it's certainly a well-traveled route.

Q. Well traveled route, but not the most direct route to Council Bluffs?

A. No, I don't believe it is.

Q. What is the most direct route to Council Bluffs?

A. Well, I'm not too familiar with the towns it goes through.

Q. Is it Ogden? That's direct to Omaha via Union Pacific, and a more direct route via Union Pacific than Denver to Omaha?

A. Well, in either case, it goes through Ogden.

Q. Does that route through Denver involve movement through Cheyenne, Wyoming? Do you know?

A. I presume that it does, but I'm not just sure what the junction point is.

Q. You're not sure?

A. It's in the vicinity.

Q. Now, that routing of the Union Pacific, you think that was the result of competition, the fact that that route was opened up, that is one of the favorable transit routes which resulted from competition?

A. As far as I know, it's been open for quite some time.

Q. That has historically been open—oh, I don't know—20 or 30 or 40 years, or maybe more?

A. A little before my time.

Q. Yes, that's right. Well, now, is that an example of a [fol. 1573] favorable transit route which resulted from competition?

A. A favorable transit route includes the other factors as well.

Q. Well, now, you think the—

A. The time—

Q. Excuse me.

A. The time in many cases is not nearly as important as the other factors of service and the things that I mentioned to you.

Q. Do you think that the route SP&S, Spokane, Milwaukee would be a more favorable transit route than the Union Pacific?

A. That would depend on the factors of service which they came up with, which they developed.

Q. Which they might or might not come up with. What could the Milwaukee give to you that the Union Pacific does not already give to you in the way of transit service? What could they give to you?

A. They could give service from points not reached by the Southern Pacific.

Q. Insofar as cars were sold east of Minnesota Transfer or east of Omaha, what transit service could the Milwaukee give to you which you don't already get from the Union Pacific?

A. No additional service, if you consider the origin question.

Q. So, so far as that is concerned, the Union Pacific, it might be additional service, but, so far as you know, would not be in any way superior to that which you are now receiving from the Southern Pacific, Union Pacific, is that right?

[fol. 1574] A. No, but it might be superior to the service given by the Northern Pacific and the Great Northern.

Q. In what respect?

A. The office personnel, the service given through the office, opening and closing times. I don't know. This is supposition.

Q. You mean: If they did all these things and the

northern lines didn't do it, then the Milwaukee would be superior? Is there an agent of the northern lines or the SP&S in Eugene?

A. No. That's handled through the OE office.

Q. I said, ". . . or the SP&S . . ." I meant the SP&S. They've got an agent at Eugene?

A. Yes.

Q. Does the Milwaukee have an agent at Eugene?

A. They don't.

Q. They don't now. So, as I understand it, Mr. Lovegren, if the Milwaukee put in an agent at Eugene, and if the Milwaukee established facilities, such as the northern lines now have through the SP&S, and the Union Pacific now has through its agent at Eugene, if all those things happened, then the Milwaukee route might be as great or it might be even better than the service of the northern lines? Is that your thought?

A. That is possible. However, there would be no use for the Milwaukee to open an office unless they have the—in Eugene unless they have the opportunity to participate in the transit business, which Eugene is quite a center for.

[fol. 1575] Q. Well, I'm assuming that the Milwaukee wins this case for the purpose of my question and then establishes an office in Eugene. What would you expect from the Milwaukee that you do not now ask for from the northern lines through the Oregon Electric agent, or from the Union Pacific or the Southern Pacific through their agents in Eugene? What would you expect from the Milwaukee?

A. Perhaps they could do a little bit better for us on rates and things than the office now does for us, and on routings.

Q. Perhaps, but what basis do you have for believing that they would give you better service on routings? You say perhaps they would.

A. Unless they're given an opportunity for competition, we don't know that. This is mere supposition.

Q. All right, it comes down to this, that you want the additional route by the Milwaukee so that you will have an additional route via the Milwaukee, isn't that what the sum and substance of it is?

A. Pardon me?

Q. I say it comes down to this, that you want this additional route via the Milwaukee so that you will have an additional route via the Milwaukee?

Mr. Maguire: Before you answer that.

Mr. Examiner, that is purely an argumentative question. The witness has already testified both at the earlier hearing [fol. 1576] in Portland and at present here, the factors which influence his support of the Milwaukee's proposition, and I contend—I submit that this attempt by Counsel to put into a nutshell, and a nutshell which is very favorable to himself, and try to put those words into the witness' mouth, is not fair to the witness.

Exam. Dishman: Well, the witness has enumerated several factors, Mr. Rockwood.

Mr. Rockwood: I'd like an answer to that question if I may have it, Mr. Examiner.

Mr. Maguire: I'll object to it.

Exam. Dishman: I'll sustain the objection on that.

Mr. Rockwood: Of course, every question asked of a witness, who is basing his testimony on his own opinion, tends to be argumentative, because you're arguing opinion against opinion.

Mr. Maguire: I'm not arguing an opinion.

Exam. Dishman: Gentlemen, let's proceed to the next question, Mr. Rockwood.

Mr. Rockwood: That's all I have.

Mr. Torinus: I have one or two questions.

By Mr. Torinus:

Q. With respect to this more favorable transit route that you're talking about, you mentioned the Union Pacific route through Denver as a favorable transit route. Is that route a route that you use quite regularly?

A. Yes, we do use it for part of the business.

Q. Do you know that Denver is some distance south of [fol. 1577] the main line of the Union Pacific through Cheyenne to Omaha and Council Bluffs? Isn't that correct?

Mr. Maguire: That's objected to on the ground that it has no bearing upon the issues in this case.

Exam. Dishman: Well, the witness—you referred to that route, did you not?

The Witness: Yes.

Exam. Dishman: He referred to that a few minutes ago. Well, let the witness answer that as he's already touched upon it.

The Witness: Even if we routed straight through—

By Mr. Torinus;

Q. Will you answer the question, please?

A. Would you repeat it?

Mr. Torinus: Would you read the question, please?

(Question read.)

The Witness: Yes, I believe so.

By Mr. Torinus:

Q. So tha it's not a favorable route from the standpoint of its being a direct route. It's an indirect route, isn't that correct?

A. Somewhat.

Q. And your utilization of the Union Pacific route through Denver, does it enable you to have more time to dispose of your cars en route?

Mr. Maguire: Is there any contention that there's anything wrong or illegal in that? I don't see what connection this has to the issues of this case.

[fol. 1578] Exam. Dishman: I think the witness can answer that question because he referred to the route, but I don't see any necessity of belaboring the point since it isn't involved, as I understand it.

Mr. Torinus: Mr. Examiner, the question is involved in my opinion, sir. The Milwaukee here is seeking through routes and joint rates from points on the SP&S to the entire eastern United States.

Exam. Dishman: Well, does that involve this route you're talking about with the Union Pacific through Denver?

Mr. Torinus: This witness has testified that one of the considerations, which prompted him to support the Mil-

waukee's complaint, was the question of a more favorable transit route. Now, he has defined a more favorable transit route as an indirect, rather than a direct route, a route which takes more time in transit. I think that we should be permitted to develop that on cross examination.

Mr. Maguire: That's just one of the considerations.

Exam. Dishman: Well, we don't want to belabor it.

Mr. Maguire: Let him go ahead. I'll withdraw the objection. I'll have some questions to ask on it.

By Mr. Torinus:

Q. Do you recall what the question was?

A. No.

Mr. Torinus: Will you read it, please?

(Question read.)

[fol. 1579] The Witness: It does.

By Mr. Torinus:

Q. And that's what makes it favorable under those considerations?

A. One of the considerations, but not one of the final considerations.

Q. Of course, the utilization of that route consumes more car days in transit for each shipment, isn't that correct, to the extent that that route takes more time than the Union Pacific direct route?

A. Not necessarily.

Q. Not necessarily?

A. Let me explain. Just as soon as possible after receiving a car, or after a car begins moving, we list with our customers, and I would say that a very large percentage of the cars are sold at such a time that they would probably go direct anyway. We divert immediately upon sale, and they would go through anyway.

Q. A large percentage of your cars would move just as well over the direct route because you happened to sell them, but some of the cars—some percentage of the cars, which are routed via Denver, take more time, isn't that correct?

A. Yes, that's right.

Q. And to the extent they take more time, that's consuming more car days in transit between your point of origin and destination in the east, isn't that correct?

[fol. 1580] A. Yes.

Q. That's one of the considerations which leads you to call the Denver route a favorable route from your standpoint?

A. It is a consideration: not the final consideration. Like I've been trying to explain, it's a combination. The service in the local office is very important too in my estimation.

Mr. Torinus: I have no further questions.

Mr. Golden: I have one question.

By Mr. Golden:

Q. Do you sell a considerable number of your shipments, which are sold in transit, moving toward the Minnesota Transfer, prior to the time that they arrive at Spokane?

A. A considerable number is a little difficult to define. Some sales are made before they reach Spokane, yes. I couldn't say the exact number because we don't keep a record of that.

Q. It occurs from time to time?

A. Yes.

Mr. Maguire: Have you gentlemen finished?

Exam. Dishman: Are you through, Mr. Golden?

Mr. Golden: Yes, sir.

Exam. Dishman: Anything more on cross examination?

(No response.)

Exam. Dishman: Redirect?

Redirect examination.

By Mr. Maguire:

Q. Mr. Lovegren, let's first talk about this Union Pacific route through Denver. How does the use of that route, [fol. 1581] in comparison with the one through Cheyenne, the northern route, direct into Omaha and Council Bluffs —how does the Denver route compare with the northern

line there when it comes to delivery down into the southwest, let's say to Oklahoma and Texas, for example? Is that a more direct route through Denver?

A. Yes, it is.

Q. Now, then, Mr. Rockwood—

Mr. Rockwood: Excuse me. I'm sorry to interrupt. Does that give more rapid service than what? Will you read Mr. Maguire's—

Mr. Maguire: The northern line, the one to Council Bluffs, which you've been calling the more direct line to Council Bluffs.

Mr. Rockwood: Does that include the route through Laurel?

Mr. Maguire: I'm comparing the two lines of the Union Pacific.

By Mr. Maguire:

Q. Then, Mr. Rockwood represents the Northern Pacific and the Great Northern, as well as the SP&S in this proceeding. Do you have routes via the Northern Pacific, for example, through Butte and down through Oaks—let me get this here—North Dakota, which is a more circuitous route than the direct route into Minnesota Transfer from the coast?

A. Yes.

Q. And you utilize that?

A. Yes.

Q. And do you regard there's anything wrong in your using that route?

[fol. 1582] A. No.

Q. So, you do have circuitous routes available—

A. That's right.

Q. —using the definitions that these gentlemen used here, who are the very people who are now condemning it, are they not?

Mr. Rockwood: I haven't condemned anything.

Mr. Maguire: You certainly gave a good imitation of that.

Mr. Musenbrock: I ask that that remark be stricken.

Exam. Dishman: Yes, that may be stricken. Proceed.

By Mr. Maguire:

Q. Now, then, Mr. Torinus was asking you whether or not, if you shipped through Spokane via the Milwaukee and wanted to cut down from Aberdeen, South Dakota, into the same tier of states—that is, Oklahoma and down into what the people have been calling the southwestern territory—whether that would not cut out some of the lines which might otherwise pick up that traffic at Minnesota Transfer. Do you recall that question?

A. Yes, I believe I do.

Q. There is another route down through there at the present time, via the Northern Pacific, for example, to Laurel, and thence Burlington down into that territory, isn't that true?

A. Yes.

Q. What effect does that have upon the lines that come out of Minnesota Transfer, such as the North Western and the Soo Line? Does it cut them out of that or not?

[fol. 1583] A. Yes.

Q. To any greater or less degree than through the Aberdeen gateway, or is that about the same?

Mr. Torinus: Well, now, just a minute. I object to that. There's no foundation laid. He doesn't know the volume of business that's handled in connection with the other lines via Minnesota Transfer, and you've asked him whether those routes cut those lines out to the same extent as something else. Now, there is no foundation whatever for that question.

By Mr. Maguire:

Q. Now, from the point of view of the geographical location of the so-called Western Trunk Lines—they have been designated here, that is, the other railroads serving Minnesota Transfer, south and east of there—do they have any better opportunity of getting hold of that traffic out of the Laurel gateway than they do through the Aberdeen gateway on this theoretical movement?

Mr. Torinus: I'll object to the question. There's no foundation laid.

Mr. Maguire: The foundation was laid by you gentlemen on your cross examination.

Exam. Dishman: Does the witness understand what is meant by the Aberdeen gateway? Do you understand what that gateway is?

The Witness: Perhaps if it were explained a little further.

By Mr. Maguire:

Q. It is the route which Mr. Torinus described to you, coming from Aberdeen, South Dakota, cutting off, and by-
[fol. 1584] passing the transfer, and going into the southwestern states. Do you understand now?

A. Yes.

Q. And into Iowa, down through Sioux City?

A. Yes.

Q. And thence through connections down into the southwestern states?

A. Yes.

Q. Do you know at the Laurel gateway of the Northern Pacific that the Burlington takes off there and goes into some of the same general territory?

A. Yes, sir.

Q. Insofar as the elimination of the Minnesota Transfer lines are concerned, are they as effectively eliminated through one gateway as they are the other?

Mr. Torinus: Now, I'll object to that question. If Mr. Maguire is just inquiring about geography, we've had all kinds of maps in evidence, and we've got all kinds of testimony with respect to tariff rates and routes.

Now, if he's asking for some facts as to volume of movement, or some fact with respect to the shipper's business, that's another matter.

Mr. Maguire: It appears, Mr. Examiner, that this was perfectly legitimate inquiry when Mr. Torinus was asking the questions. Now, when the tables are turned on him, he objects because there are maps in evidence.

[fol. 1585] Exam. Dishman: Well, Mr. Maguire, you're asking a question that was based on what the witness answered on certain questions of Mr. Torinus?

Mr. Maguire: Yes, I'm developing that further. Now, Mr. Torinus doesn't like it.

Mr. Torinus: No. I asked this witness what he would do with respect to his own business.

Mr. Maguire: All right, then, I'll change it around this way:

By Mr. Maguire:

Q. What would you do with respect to your own business on anything that you wanted to send south through the Laurel gateway via the CB&Q? Would you eliminate the Minneapolis lines from that haul if you wanted to get down into that territory via the CB&Q out of Laurel?

A. Yes.

Mr. Maguire: Does that satisfy you?

Exam. Dishman: Is that all?

Mr. Rockwood: If it satisfies you.

Mr. Maguire: It satisfied me.

By Mr. Maguire:

Q. Now, Mr. Rockwood called to your attention Exhibit 9 and was good enough to explain to you that on rates through Spokane off the SP&S System via the Milwaukee that you could not divert beyond local points on the Milwaukee. That was his words as I recall it, and I wish to [fol. 1586] have you bear that in mind with this question in view: When do you start your efforts to sell a transit car? That is with reference to leaving its point of origin.

A. Sometimes before it's even billed out.

Q. Do you have in your business what they have called list days twice a week that you send out to your customers?

A. Yes.

Q. Descriptions of cars that are either being loaded or en route?

A. Yes.

Q. And would you be inclined, in view of Mr. Rockwood's description of the application of the Milwaukee rates, to send a transit car out over the Milwaukee Railroad through Spokane?

A. No.

Q. And what would be the reason for that?

Mr. Rockwood: I believe that this is repetition to direct examination which occurred last June.

Exam. Dishman: Well, I think—

Mr. Maguire: All your cross examination, Mr. Rockwood, would have been repetitive.

Exam. Dishman: Let the witness answer.

The Witness: I would—

Mr. Maguire: Did you lose track of that? Will you read the question, please?

(Question read.)

The Witness: Diversions beyond—

[fol. 1587] Mr. Maguire: Off the record a moment?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Maguire:

Q. Diversions beyond, you say, would be the reason for that?

A. Yes.

Q. Now, then, if the through rates, such as the Milwaukee seeks here, are granted, will you state whether or not you will be in better position to route transit cars over the Milwaukee through Spokane to the east?

A. Yes.

Q. And after the car leaves the transfer, as Mr. Musenbrock brings out, after it leaves the transfer, it doesn't make much difference how it got in there, but will you state whether or not in the interim you will have an opportunity at least to sell that car, before it reaches the transfer, in Milwaukee local territory?

In other words, when a transit car is on its way from the point of origin, headed toward the transfer, if it were moving Milwaukee, with the freer right of diversion which we've described, would you then be in position and would you try to sell that, as you do other cars, before it reaches the transfer?

A. Oh, definitely, we would.

Q. Therefore, would that open up a greater potential [fol. 1588] market territory to you on the Milwaukee?

A. Yes, it would.

Q. And another thing, Mr. Boe was questioning you, as I recall, about cars which are eventually sold down in the southwestern states, as to whether or not a more direct route might be through Laurel or through Aberdeen.

When a car is consigned, in the first place, let us say, to Minnesota Transfer, a transit car, do you have any idea at the time you bill it whether it's going to be sold in the southwestern states, the eastern states, the southern states, or the midwestern states?

A. No.

Mr. Maguire: That's all. Thank you, Mr. Lovegren.

Mr. Torinus: I have one or two questions brought out by your redirect, Mr. Maguire.

Recross examination.

By Mr. Torinus:

Q. What percentage of your transit shipments, Mr. Lovegren, are disposed of east of the Mississippi River?

A. Seventy to eighty per cent.

Q. Is that in the territory generally north of the Ohio?

A. No. That includes the southern states, Louisiana, Kentucky, all of that area, there, Michigan.

Q. Would you say that more than half of your shipments were disposed of east of the Mississippi and north of the Ohio and Potomac?

[fol. 1589] A. Let's see now. Is Wisconsin also east of the Mississippi?

Q. Yes.

A. That would be difficult to say right offhand.

Exam. Dishman: Well, you can't answer the question?

The Witness: Yes, I think that perhaps 50 per cent. That would be east of the Mississippi, as I understand it, and north of the Ohio-Potomac. That would include Ohio, Pennsylvania, New York, is that correct?

By Mr. Torinus:

Q. Yes, sir, Indiana and Michigan also. Now, you use this route of the Union Pacific on some of those shipments, I take it?

A. Yes.

Q. The Denver route, the route through Denver?

A. Yes, some of them through Denver; not all of them.

Q. So that you didn't mean to imply, in response to Mr. Maguire's question on redirect, that you'd use the Denver route only where you disposed of a car south and east of Denver in that territory where the Denver route happened to be the most direct?

A. No.

Mr. Torinus: I have no further questions.

Mr. Maguire: Nothing further.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: Mr. Verne McGuire, please. Mr. McGuire's testimony commences on Page 625 of the transcript. [fol. 1590] Mr. Rockwood: My cross examination of Mr. McGuire will be brief unless something comes up.

Vern McGuire having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. McGuire, have you been shown by Mr. Maguire, Counsel for the Milwaukee, or by any other representative of the Milwaukee, these Pages 25 and 26 of what has been referred to as Exhibit 17 in this case?

A. They referred to them, and I have some rough figures for the year 1953, all that I was able to get.

Q. How many cars were sold firm by your company in 1953? Have you got that figure?

A. I don't have what was sold firm, Mr. Rockwood. We

sold 468 cars in 1953. We're a manufacturer; not a wholesaler.

Q. 463 cars?

A. 468.

Q. 468. Where is your plant located?

A. It's located in Eugene, at the junction of Seneca Road and the SP Coos Bay line.

Q. And as I remember, you sell entirely to wholesalers?

A. That's right, with the exception of occasional shipments into California.

Q. And do you do any wholesaling yourself?

[fol. 1591] A. No.

Q. Do your records show whether those cars were firm sales or transit sales?

A. I would suppose they would, yes, probably by—yes, they would show that.

Mr. Maguire: Just a moment. To get this clarified, are you talking about sales by the wholesalers, or about sales by Mr. McGuire?

Mr. Rockwood: Sales by Mr. McGuire.

The Witness: They're all firm sales. Those are all firm sales.

By Mr. Rockwood:

Q. Those are firm sales to wholesalers?

A. That's right.

Q. You do not know, when you make a firm sale to a wholesaler, whether he is going to move the car as a transit car or as a firm sale?

A. Generally, no. Generally, we have no interest as long as we get the price on it.

Q. Do you have any information subsequently given to you so that you can tell what percentage of those sales made by you firm to the wholesaler are in turn made or sold firm by the wholesalers?

A. About the only information we have there is what we call—where we have what we call a firm destination which the routing would differ on.

Q. How much of your business is sold firm by the wholesalers?

[fol. 1592] A. If you want a rough estimate, I would judge 30 per cent.

Q. Thirty per cent firm, and about 70 per cent transit?

A. Yes.

Q. If you will bear with me just a minute.

A. Certainly.

Q. I want to look at my notes here so that I will not offend Mr. Maguire too much by repetition.

Is it possible from your records to compile the data called for on these two sheets that I just showed to you?

A. Yes, it is.

Q. How long would it take to do it?

A. It's already been done.

Q. All the data required?

A. I think so.

Q. On these two sheets?

A. Yes.

Q. Do you have it with you?

A. No. It's in my hotel room.

Q. I'd be very glad to have that furnished by you, Mr. McGuire.

A. I'd like to know what disposition is going to be made of it before I turn it over to you.

Q. It will be offered as an exhibit.

Mr. Maguire: It will be made public.

The Witness: It will be made public? I doubt that I'd want to furnish it.

[fol. 1593] Mr. Rockwood: A copy will be made, and it will be put in the record, from which we can determine what would be a cross section of your business to see to what extent the issues in this case might be influenced, one way or the other, by the testimony you give, one way or the other. We just want it as an exhibit in the record.

The Witness: I certainly wouldn't want to jeopardize my own personal position as far as our business goes, but I'd just as soon—if these records were to be made public, I'd just as soon restrict my answers to the type I've just been giving, total number of cars, the percentage, and that's all, which ought to serve about the same purpose, I believe.

By Mr. Rockwood:

Q. All right, will you tell us this: From that material, can you tell us the disposition of your sales by states in the United States in any period?

A. I could, but I had a very short time to go over this material and it's quite extensive, and I couldn't give you that answer now, no.

Q. Would you object to compiling such a statement showing the distribution by states?

A. By states, not at all, but I think that a lot more comprehensive records could be obtained from the West Coast Lumbermen's Association for all movements out of the coast, without my little bit.

Q. What is the West Coast Lumbermen's Association?

[fol. 1594] A. It's an association of lumber manufacturers.

Q. Does it include the principal producers of fir lumber on the west coast?

A. As I understand it, it does.

Q. Is your mill a member of West Coast Lumbermen's Association?

A. Yes.

Q. And you report, do you not, to the West Coast Lumbermen's Association?

A. That's right. It's voluntary, but most of us do.

Q. Did you furnish a report to West Coast Lumbermen's Association for the year 1954, showing distribution of sales by states?

A. I doubt that its been required for 1954, but we furnished it for 1953.

Q. Have you readily available a copy of that report which you made for 1953 to West Coast Lumbermen's Association?

A. No. I might or might not have. I don't know.

Mr. Maguire: Just a moment. Mr. Examiner, I object to this line of inquiry because it is improper cross examination. Mr. McGuire's testimony covered one consideration here, which I think can be readily ascertained by examination of his very brief testimony at the Portland hearing.

The prime consideration, so far as Mr. McGuire's firm is concerned, is the availability of additional car supply. Now, so far as the routes are concerned, or distribution, Mr. McGuire did not testify to that on direct or on cross [fol. 1595] at the former hearing. So, this is improper cross examination.

Mr. Rockwood: I did not so read his testimony because it went to other subjects.

Mr. Maguire: I object to that question on the ground it's improper cross examination.

Mr. Rockwood: May I finish, Mr. Maguire, and ask you a question?

Exam. Dishman: Proceed.

Mr. Rockwood: I would like to ask Mr. Maguire: Is he willing to stipulate that the testimony of Mr. McGuire shall be considered for no purpose whatsoever by the Commission in this case except on the subject of adequacy of car supply?

Mr. Maguire: I am not naturally going to make a gun-at-head stipulation at this time. I have my own interpretation which I make at this time of his testimony, and it may be that Mr. Rockwood is right that it covers something in addition, and I don't want to debar myself, but I think he should show us where he is now indulging in proper cross examination. I claim that it's improper cross examination.

Mr. Rockwood: He talked specifically, beginning at Page 628, of the lack of diversion privileges along some routes, and he also discussed car shortages.

Mr. Maguire: Now, Mr. Rockwood, let's be frank about this. He says this: " . . . in a general way, in talking to the transit brokers, they do not move too much northern rout- [fol. 1596] ings because quite often they have indicated they're afraid of lack of diversion privileges on the northern route."

Now, he's talking about what brokers have said to him; not about his own experience.

Mr. Rockwood: Well, sure, a good deal of his testimony was hearsay, I'll grant you that. Nevertheless, he did talk about the diversion privileges.

Mr. Maguire: But this business of going into laborious combing apart of Mr. McGuire's business, when the great

bulk of it, so far as here involved, is sold to wholesalers, who do their own routing after that, I think that is an abuse of cross examination.

Exam. Dishman: Well, the record stands. We have his direct testimony here. You can limit it to that, Mr. Rockwood. Ask him direct questions.

Mr. Rockwood: Yes, of course, but, if the Examiner please, he was talking about what he hears from brokers about diversion privileges, and, of course, that affects his business, and I want to find out where he sells his lumber, in what parts of the United States. I would like to have the statement already prepared, as he says, for the year '53—I'd rather have '54—showing the distribution by states as reported by him to West Coast Lumbermen's Association.

Exam. Dishman: Well, Mr. Witness, as I understood you a little while ago, you said you didn't care to furnish [fol. 1597] it. You said you would rather give him percentages in this hearing. Is that right?

The Witness: That's what I'd restrict it to, unless I'm directed to do something else.

By Mr. Rockwood:

Q. Will you do this: Will you give us a statement showing by percentages of the total carload shipments in the year 1953 and for the year 1954, if available, the ultimate disposition of those cars by states in groups, the first group covering the states east of the Illinois-Indiana state line, north of the Ohio River, including West Virginia and the District of Columbia in the first group; the second group, including the tier of states, Illinois, Wisconsin, Minnesota, Iowa and Missouri, North Dakota, South Dakota, Nebraska and Kansas; the third covering the states east of the Mississippi River and south of the Ohio and Potomac; the fourth to—as far as I'm concerned—all other states? Can you do that?

Mr. Maguire: Just a moment. Now, Mr. Examiner, I think that the—I would ask the privilege of asking the witness a couple of clarifying questions before he makes any agreement.

Exam. Dishman: All right.

Mr. Maguire: Mr. McGuire, after you have once sold a car to a broker, or a wholesaler, I should say, do you know where that car finally ends up, where it is finally delivered?

The Witness: Only about 30 per cent of the time, as I indicated to Mr. Rockwood.

[fol. 1598] Mr. Maguire: And would these percentage figures—bearing in mind Mr. Rockwood wants the states of final destination of these shipments—would you be able to give him percentage figures which would reflect that?

The Witness: All I would be able to give him at the present time would be approximately 30 per cent of our total yearly shipments, 125 or 130 cars for the year 1953.

By Mr. Rockwood:

Q. That would include only the firm shipments?

A. That's right.

Q. You don't have, I take it, the final destination of a car which is sold by a wholesaler as a transit car?

A. Not all the time. Sometimes they return the paid freight bill and we know, and we make settlement on the different freight rate from the original bill.

Q. To what extent on transit cars do you get that information as to the ultimate destination?

A. I would say not over 10 or 15 per cent of the time.

Q. Of the transit cars?

A. Yes, with the exception that, when they return a remittance, they will note on the bottom that it was sold in a different rate territory; and, if it was done, then an adjustment of the rates—I mean an adjustment of the remittance to us, but, as far as the actual destination—I mean the rate territory—that would cover a lot of territory. Ultimate destination by state or town, probably no.

[fol. 1599] Mr. Maguire: Could I ask another question?

Mr. Rockwood: I take it that it's impossible to furnish the information?

Mr. Maguire: I take it that it is. I just want to ask one thing more.

In regard to that 30 per cent you talked about, does that include your California shipments as well?

The Witness: Oh, definitely, yes.

By Mr. Rockwood:

Q. So, it's impossible to furnish a statement showing your distribution by states?

A. In total, yes.

Q. So that you don't know where your lumber finally ends up and is sold to the ultimate consumer?

A. The bulk of the time, that's right.

Q. You do not have that information?

A. That's right.

Q. Nor in any of your records?

A. No; that's right.

Q. Your mill at Eugene is located on the Southern Pacific, is it not?

A. Yes.

Q. What percentage of your total business out of your mill is routed out of Eugene Southern Pacific, and what per cent is routed out Oregon Electric?

A. Probably—at the present time, probably 95 per cent [fol. 1600] SP, 5 per cent OE through reciprocal switching.

Q. Then the upshot of it is on the basis of about 455 cars a year, at the present time the Oregon Electric is getting about 5 per cent?

A. They got 22 cars in '53.

Mr. Rockwood: That's all.

Exam. Dishman: Anything further in the nature of cross examination?

(No response.)

Redirect examination.

By Mr. Maguire:

Q. Is that about the pattern of your future shipments? What can you say about that?

A. Well, I don't know. We would like to make more OE shipments.

Q. And so far as the sales to brokers are concerned, who is it that puts the car out of your mill? Do you start it rolling, or does the broker, or does the broker designate the routing?

A. The broker usually designates the routing, yes.

Mr. Maguire: That's all.

Recross examination.

By Mr. Rockwood:

Q. So, I take it you don't have anything to say as to whether they go Oregon Electric or Southern Pacific?

A. Well, no, that's not always true. They sometimes ask us our preference on which way we would rather have it go.

Q. So far you've preferred the Oregon Electric 25 times out of 500?

[fol. 1601] A. I guess it was about that.

Mr. Rockwood: That's all.

Exam. Dishman: Any other cross examination?

(No response.)

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: Call Mr. H. S. Sackett.

H. S. Sackett having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Sackett, at the time you testified in June, 1954, at Portland in this case, you were engaged in business with Wood Products Company?

A. That's right.

Q. In what capacity?

A. I was the Manager.

Q. Is Wood Products Company still engaged in business?

A. No.

Q. Do you know what wholesaler has taken over the accounts of Wood Products Company?

A. Knapp Lumber Sales.

Mr. Rockwood: That's all.

Exam. Dishman: Any further cross examination?

(No response.)

[fol. 1602] Mr. Maguire: No redirect.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: Call Mr. Kellenberger, please. Mr. Kellenberger's testimony, direct testimony, starts on Page 498 of the record.

Ed Kellenberger having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Do you know, Mr. Kellenberger, how many cars of lumber you shipped out of your mill at Narrows, Oregon, in the year 1954?

A. No, I don't exactly.

Q. Was it approximately 250 cars?

A. I imagine somewhere around 200, but I don't know exactly.

Q. Do you recall how many you shipped in 1953?

A. No, I don't.

Q. Was it about the same volume, or were you doing more or less business in '53 than you did in '54?

A. I imagine it was more.

Q. You imagine it was more, but you can't tell us?

A. No, I can't.

Q. Where do you get your logs, Mr. Kellenberger? Do you do your own logging, or buy logs, or how?

[fol. 1603] A. We do mostly our own logging.

Q. Do you own the timber on which you log on the land, on which you log?

A. No; it's the Government.

Q. You make a logging contract with the owner of the land and then bring the logs into your mill?

A. Usually we buy at Government sales, timber sales.

Q. Is that territory in which you generally purchase Government timber in the watershed of the Santiam River?

A. Yes.

Q. And you, I take it, are in competition with a good many other sawmills in bidding for that Government timber?

A. That's correct.

Q. At the present time, how much timber do you have under contract?

A. Oh, possibly two and a half million feet.

Q. How much do you saw in your mill during a year?

A. I think last year we had something over 10 million.

Q. Ten million. At the rate you're going with the logs that you presently have under contract—of course, there's always a possibility of getting some more—but that which you presently have is about a three months operation for you?

A. I imagine we have three months supply.

Q. Do you buy logs in the open market in that area?

A. We do when they're available.

[fol. 1604] Q. Are there logs available to any extent in that area?

A. Well, there's becoming more hemlock available.

Q. Is hemlock as desirable for your purposes as fir?

A. Well, we think it would be more so, with the dry kilns we've installed—that we're installing.

Q. You are presently building a dry kiln?

A. Yes.

Q. Up to the present time, you've had no dry kiln?

A. That's correct.

Q. And hemlock, if it's kiln dried, you believe is as good a product in the market as fir lumber?

A. Well, it's about all we can get. We can't get a big enough quantity of fir, and, of course, we have to do the next best thing.

Q. Do you sell entirely through lumber wholesalers?

A. No, not entirely.

Q. A good many of the cars out of that mill by you as consignor are billed out of that mill, that's correct, isn't it, by your company?

A. Well, we ship lots of transit cars. We start them out and sell them.

Q. But you as consignor—you're named as consignor on the cars leaving your mill in many instances, isn't that a fact?

A. Yes, I'd say so.

Q. Are those transit cars or firm sales?

[fol. 1605] A. Well, most of them are transit cars.

Q. Do you do any firm business?

A. Lots of it.

Q. Are those firm sales made firm by the ultimate consumer, or made firm by a wholesaler, we'll say, in Eugene?

A. Sometimes they're firm orders through brokers and other times they're direct sales.

Q. By your mill?

A. By the mill.

Q. Where you are the named consignor on a particular shipment, do you select the—control the routing?

A. Well, we usually just leave that up to the railroad. It makes no difference to us, either GN or NP if it goes to the transfer. That's the only route we can ship.

Q. And you're on the Santiam Branch, of course?

A. That's correct.

Q. And you can't avail yourself of the Milwaukee route via Spokane to Milwaukee local points because rates will not apply from the Santiam?

A. I suppose that's true. I know that we can't get off that branch line onto the SP without quite a charge. I forget what it is. I think it's six and a half cents.

Q. That's a proportional rate down to Albany?

A. I don't know where that takes over, whether it takes over at Albany or at the switch at Lebanon.

[fol. 1606] Q. But to ship it out over the Southern Pacific, you have to pay something in addition to the rate applying to a far eastern destination by the Oregon Electric?

A. We don't ship, period, over the Southern Pacific because they're not competitive.

Q. I didn't believe that you did. I was just wondering if you did ship over the Southern Pacific.

A. We can't and be competitive.

Q. Did Mr. Maguire or any representative of the Milwaukee show you sheets such as this Page 19 and 20 of—Page 19, rather, of Exhibit No. 17 in this case? I show you a copy of that page. Did he ever show you that sheet?

A. I think that he did.

Q. Are you able to prepare the information called for there?

A. I wouldn't want to.

Q. I know. That wasn't the question. Are you able to?

A. I didn't agree to complete the statement.

Q. Will you glance through it and tell us whether you are able from the records which you now have to prepare that information? I'm not asking whether you will or will not, but if you're able to from your records.

A. I don't think we could for the reason that lots of cars, we don't know where they end up.

Q. Well, you notice—

A. When we get the freight bills back, the ultimate re-
[fol. 1607] ceiver of that car of lumber, that's cut out of the freight bill if we get the freight bill back.

Q. The name of the receiver is cut out, but the rest of the data on the freight bill is available to you, showing the destination, but the name of the receiver—

A. We don't get back a very large percentage of those freight bills.

Q. Such as you do get back have deleted the name of the ultimate receiver?

A. That's correct.

Q. But all the other information on the freight bill is still intact, is it not?

A. I presume it is, but I wouldn't say that we keep those freight bills.

Q. Have you ever made any attempt, Mr. Kellenberger, to determine the distribution of your product by states in the United States, so that you could say where your lumber ultimately goes?

A. How was that again?

Mr. Rockwood: Would you repeat the question?

(Question read.)

The Witness: No, I haven't.

By Mr. Rockwood:

Q. Are you a member of the West Coast Lumbermen's Association?

A. Yes; just the grading rules division, not the—

Q. You are not one of the reporting mills upon which [fol. 1608] the West Coast Lumbermen's Association bases its statistical statement of distribution of lumber by states, is that correct?

A. Quite recently they tried to get us to fill out those reports, but it's too much red tape for a small business.

Q. You won't do it?

A. We won't do it.

Q. You won't do it for them, much less for me?

A. That's right.

Mr. Rockwood: That's all.

Mr. Torinus: I have no questions.

Exam. Dishman: Any further questions?

By Mr. James:

Q. Mr. Kellenberger, you stated certain things in your direct last June about the possible effect on your business on the outcome of this case. Is it a fair statement to say that the things you said were based entirely on what had been told you by the broker with whom you deal?

A. Specifically what on that testimony?

Q. You testified, did you not, that you had some reason to believe that, if the Milwaukee were granted these through routes that they're asking for, it might be beneficial to you? Is that true?

A. It would be beneficial to me, I think.

Q. I'm asking you whether or not those statements were based upon what the brokers with whom you deal had told you?

A. No. That was based on the business that I can do [fol. 1609] direct with retail yards in Montana, Idaho, and Colorado, and some business in Salt Lake.

Q. But you're not now—

A. I can't get my product in there now without shipping by truck there.

Mr. James: That's all.

Mr. Rockwood: Well, with the Examiner's indulgence?

Exam. Dishman: Go ahead.

By Mr. Rockwood:

Q. If rates were published from the Santiam Branch, where you're located, on the same basis as now apply via the Oregon Electric from Albany, would that take care of your Montana situation?

A. I don't think I can get in there without paying a charge above—now, I'm not a rate expert.

Q. Let me ask this: You recall, do you not, that the rates from Albany to Milwaukee local stations via Spokane apply only east of Mobridge, South Dakota? Had you heard that?

A. Well, I don't know those rates at all, but I do know where I can sell and where I can't sell usually.

Q. Let me ask you this: If the rates from the Santiam Branch, including Narrows, from which you ship, were made applicable on a single factor basis to all local points on the Milwaukee east of Spokane, would that take care of your situation so far as sales in Montana at Milwaukee local points is concerned?

A. That would be of some assistanee, but it would be [fol. 1610] better, of course, if we could start our cars and try and sell them through that area, and, if we got in trouble, we could get off of there and back to the transfer. That would be all right.

Q. If you started them out rolling on the Milwaukee, you wouldn't ship them to Montana, would you, except on a firm sale?

A. Well, you might start some cars and then try and sell them along the line on that branch where we do have retail outlets.

Q. What branch is that?

A. On that branch through Montana and Idaho.

Q. You say along that branch.

A. Well, there is a line through there, I'm sure, because we shipped one car in there.

Q. Well, the Milwaukee, of course, runs—

A. I don't know whether we shipped—I can't tell whether we shipped it over the Milwaukee.

Q. I was just trying to find out. There is a Milwaukee line, of course, all the way from Spokane to Chicago. You know that? Through Idaho, Montana, South Dakota, Iowa, and so on, to Chicago. Is that what you're talking about when you say that branch?

A. Well, so that we can get into that area. If we can get in there and then be able to get out of there, it would be an advantage to us without getting caught with our cars in there.

Q. Without getting caught with your cars in there? You wouldn't send them in there if you didn't have a sale, would you?

[fol. 1611] A. Well, we might start it for that area and try to sell them as they got toward the transfer.

Q. Well, what is the consumption of that market, so far as you are concerned, compared with the consumption farther east? Isn't that a rather small market, compared with the market in the east?

A. Generally, it might be considered somewhat small, but to us it's a good market because they utilize household grade lumber, which we have.

Q. What stations in Montana?

A. Well, I'd have to look at my records before I could give you that information.

Q. Can you tell them by looking at a Milwaukee map?

A. The towns? I'd have to look at our customer list.

Q. Would it be such towns as Bozeman?

A. I can't tell you that.

Q. I'm trying to find out what your difficulty in Montana is, but you can't tell us what stations?

A. Well, I couldn't without going to my records. I couldn't testify to that.

Q. Do you know there's a great amount of lumber produced in the state of Montana?

A. That's right.

Q. And a great deal of lumber distributed from those mills in that part, don't you?

[fol. 1612] A. Right.

Q. And you're competing with that material in there?

A. We ship in our low-grade—quite a lot of low-grade lumber for grain elevators, and that class of business, particularly green, No. 3.

Q. Any No. 3 and 4 spruce in Montana?

A. Evidently the market is either higher, or there is some reason for us being able to sell in that area, but we do sell quite a lot by truck.

Q. Then to help you, you'd have to have rates from the Santiam into that territory?

A. Not only that, but I think it would help us if we had other rates in there too.

Q. You can always transit along the Great Northern and Northern Pacific?

A. The main wholesalers cover that pretty thoroughly. We get smaller retail yards and smaller operators, the people we do our business with. We don't go through the broker.

Q. Are they in Montana, Idaho, and Salt Lake?

A. Well, in Salt Lake, we have three yards that we deal with, and we have yards in Montana and Idaho.

Q. How do you ship to Salt Lake?

A. Truck.

Q. Don't you have joint through rates to Salt Lake?

A. We don't ship too much through to Salt Lake by train.

[fol. 1613] Q. You have rates to Salt Lake, don't you?

A. I haven't paid too much attention to that. I don't know.

Q. Haven't you got rates to Salt Lake via the Great Northern through Bieber? Have you ever investigated that?

A. I haven't investigated that.

Q. But in any event you prefer to ship by truck than to ship by rail to Salt Lake?

A. We do to Salt Lake. We ship lots by truck.

Q. Do you ship by truck to Idaho?

A. Idaho, yes.

Q. Do you ship by truck to Colorado?

A. Not so much to Colorado.

Q. You have rates to Colorado, don't you, joint rates, rail rates?

A. I think we shipped one car in there, and we found that the freight rate was—the additional charge we had put it up too high, higher than the truck rate.

Q. Can the Milwaukee get you in on any better basis to Colorado?

A. There are points, I think—I forget now which state it is, one of the two, where they go, where we'd like to ship.

Q. Well, now, which two states?

A. I think some in Montana—

Q. But you can't tell us where in Montana?

A. Not without going through my records. I'd have to check those customers off my books.

[fol. 1614] Q. Can you tell us where in Montana you'd like to go to, and can't get to now?

A. Not without going to my books, I can't.

Mr. Rockwood: That's all.

Mr. Torinus: I have one or two questions.

By Mr. Torinus:

Q. Mr. Kellenberger, what are those destinations to which you now ship by truck? What area is that?

A. Well, we're shipping into Idaho. I can't give you the towns because these people buy lots of lumber. They're large ranchers.

Q. Are they in northern or southern Idaho?

A. Twin Falls, we ship in there a lot, in the Twin Falls area.

Q. Can you tell me generally where Twin Falls is?

A. Not without a map. I've never been there.

Q. Well, is that down in the Boise area?

Mr. Maguire: The witness said he couldn't tell, Mr. Torinus. I don't know whether Mr. Torinus' refresher would help him any, but it seems to me he's answered that question.

By Mr. Torinus:

Q. Do you know how far that is from the Milwaukee Railroad?

A. Not exactly.

Q. You're not contending that these rates that you're seeking here—rather, that the Milwaukee is seeking will get you into Twin Falls?

A. That's just one of the places. You asked me, and that's one I can remember just offhand, but we do quite a lot of [fol. 1615] shipping in there, and many other places.

Q. To what other destinations in Idaho do you truck?

A. I couldn't tell you without looking at my books. I can't remember specific instances.

Q. Do you truck to any destinations in Montana?

A. Some.

Q. Is that northern or southern Montana points?

A. I couldn't give you much information on those towns without actually going over my books.

Q. You don't know whether you use trucks to any destinations on the Great Northern or Northern Pacific in Montana?

A. Well, I—

Mr. Maguire: Just a minute, Mr. Kellenberger. Mr. Examiner, I think that this kind of cross examination is getting a little bit out of hand because Mr. Torinus asked the witness as to certain points, and he said he wouldn't know without looking at his records. Then Mr. Torinus asked him whether those points, which he can't tell without looking at his records, are on the Great Northern or Northern Pacific. I think that is approaching the absurd in cross examination.

Exam. Dishman: Is it fair to say, Mr. Witness, that you don't know where these points are? Is that right?

The Witness: I couldn't say.

Exam. Dishman: You wouldn't be able to tell? If we pick a point in any part of the state, you wouldn't know whether [fol. 1616] it is north or south?

The Witness: No, I wouldn't know without looking at my books.

Exam. Dishman: All right, Mr. Torinus.

By Mr. Torinus:

Q. Mr. Kellenberger, then you don't know whether or not these joint through rates, which the Milwaukee is seeking in this complaint, will have any effect on your trucking or not?

A. I think it would. I wouldn't know without taking those towns, if I pick them off a map there. I found out I couldn't get to them without paying a penalty by rail, and that's the reason we ship by truck.

Q. Well, that's what we've been asking you all afternoon. What towns are they? On what basis do you say you think it would?

A. I'd have to go to the books and get the names of the towns. It's hard to remember all those small places.

Q. Mr. Kellenberger, have you ever made any application to any railroad official for these rates from your mill on the Santiam Branch to the territory to which you ship in connection with the Milwaukee Railroad?

A. No, I've never made any application to anybody but the agent there, just to find out what the rates are, and what lines I can get on and get off of, is all that I have done.

Mr. Torinus: I have no further questions.

Exam. Dishman: Any other questions?

[fol. 1617] Mr. Maguire: No redirect.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We'll now take a short recess.

(Short recess taken.)

Exam. Dishman: Come to order, please.

Mr. Maguire: Call Mr. L. L. Pierce. Mr. Pierce's direct testimony started on Page 681 of the record.

L. L. PIERCE having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Pierce, I show you two sheets, which are copies of Sheets 29 and 30 of compilation which has been identified in the record as Exhibit 17. These contain a series of questions—or, rather, a summary of data requested.

Were you ever shown copy of those two sheets since last November by any representative of the Milwaukee?

A. I couldn't say.

Q. Were the data described in those sheets discussed by you with any representative of the Milwaukee?

A. Not to my recollection.

Q. Take a moment, if you will please, and examine both sheets, these two, so that you're familiar with the nature of the information asked for. You're generally familiar with it now?

[fol. 1618] A. Yes.

Q. Are the records of Fairhurst Lumber Company still in existence and in form so that that material requested on those sheets could be prepared?

A. I suppose it could be, but at quite a cost.

Q. Do you know how long it would take?

A. That would depend on how many people you had digging out the information.

Q. How many cars do you ship a year? I don't recall what you testified.

A. I presume you're speaking of—well, let's see now—it would vary from 60 to 250 cars a month.

Q. So that you would be under 2,500 carloads a year?

A. I would think so, yes.

Q. This Exhibit 17 on Page 1 qualified the request by a statement: If shipments were 1,000 or over, but less than 2,500 carloads, furnish requested data complete for the months of January, April, July and October in 1953. In other words, that is for approximately one-third of a year's business.

Mr. Maguire: Just a moment. If I might with the Examiner's leave, I would like to have one thing made clear, and that is that this request was not restricted to the state of Oregon, nor to any particular carrier, but was to all shipments out of the states of Oregon and Washington. That's what the request reads for, if you will read the opening page [fol. 1619] of your own exhibit. You will see that's what that asks for.

Mr. Rockwood: That's correct. I probably didn't recall at the moment.

By Mr. Rockwood:

Q. Do you make sales out of Washington and Oregon?

A. Yes, and Idaho.

Q. How many in total out of Washington and Oregon? Over 2,500?

A. No.

Q. Under 2,500?

A. Yes.

Q. All right, then, this note would apply. Since it's under 2,500, we request the data for the four months of January, April, July and October in 1953, approximately one-third of a year's business. That would be substantially less work to compile than it would be for a year's business, I take it.

A. I imagine.

Q. Since you've not studied this, I take it you can't give us any close estimate of the time, of the man hours or the man days of your force which would be consumed in preparing that data?

A. I couldn't because I don't know the exact amount of work necessary to compile it.

Q. To dig it out of your own records?

A. That's right.

Q. The material is in existence?

A. It is in this respect: The records of our sales natu- [fol. 1620] rally, why, we don't keep it in that form. We'd have to compile it from the beginning.

Q. You'd have to go back to the original documents?

A. Yes.

Mr. Rockwood: I understand. I have nothing further.

Mr. Torinus: I have no questions.
Mr. James: No questions.
Mr. Hillman: No questions.
Mr. Maguire: I certainly have no questions.
Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: Call Mr. J. M. Alexander. Mr. Alexander's direct testimony in the June hearing commences on Page 515 of the record.

J. M. ALEXANDER having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination

By Mr. Rockwood:

Q. Mr. Alexander, do you represent Indianola Lumber Company, which has a mill at Lebanon, Oregon, on the Santiam Branch of the Oregon Electric?

A. Yes, that's right.

Q. Are you served by any line other than the Oregon Electric?

A. No.

Q. You do not even have reciprocal switching arrange- [fol. 1621] ments whereby you can get to the Southern Pacific at Lebanon?

A. No.

Q. Can you ship at all over the Southern Pacific?

A. Not without a local charge.

Q. A switching charge?

A. No. It's an arbitrary.

Q. That's the six and a half cents we've been talking about?

A. I believe that's right.

Q. Your principal complaint, as I remember it, is that there are no rates from the Santiam Branch of the Oregon Electric applying to Milwaukee local points east of Mo-

bridge, via Spokane on the Milwaukee. That's your principal complaint, is it not?

A. West of Minneapolis-St. Paul.

Q. Between Mobridge, South Dakota, and the Twin Cities?

A. Yes.

Q. Were you ever shown by Mr. Maguire a copy of these sheets, which are Pages 22, 23 and 24 of what has been marked as Exhibit 17 in this case? Will you glance through those sheets?

A. Yes, I was shown that.

Q. Have you prepared data as outlined in that statement?

A. No. I didn't agree to.

Q. Is the information enumerated in those pages available in your records?

A. Yes.

Q. Do you know how long it would take you to compile it?

[fol. 1622] A. No.

Q. You didn't agree to do it because you thought it was a burdensome task, or because you didn't want to disclose the information?

A. It would be both.

Mr. Rockwood: That's all the cross examination I have.

By Mr. Torinus:

Q. Mr. Alexander, I have one or two questions. You're also the owner of Alexander Lumber Company?

A. Yes.

Q. And that company disposes of the products of Indianola Lumber Company, is that right?

A. That's right.

Q. That concern also is in the wholesale business and disposes of the products of other mills also?

A. Yes.

Q. You are a transit operator, are you, Mr. Alexander?

A. Yes.

Q. What species of lumber do you purchase and sell in your transit operation?

A. All soft woods of west coast species.

Q. Do you purchase lumber in your transit operation on the Milwaukee Railroad?

A. Oh, yes.

Q. What does that consist of principally? What species?

A. Douglas fir, hemlock.

[fol. 1623] Q. Hemlock? West coast hemlock?

A. Some hemlock, considerable west coast hemlock.

Q. Now, in your transit business, where do you dispose of most of your cars? What territory?

A. What territory mainly?

Q. Principal, yes. East of the Mississippi River?

A. Territory east of the Mississippi River and north of the Ohio..

Q. What percentage do you dispose of in that territory?

A. Probably 85 to 95 percent.

Q. Do you also sell to markets in Minnesota, Wisconsin, and Iowa, do you?

A. Very little.

Q. Do you dispose of any cars in South Dakota?

A. Very rarely.

Q. Now, of course, to the extent that you purchase any west coast lumber, originating on the Milwaukee Railroad, for example, you have a full line of rates via the Milwaukee to points on the Milwaukee Railroad in the east of the United States, isn't that right?

A. I don't quite understand your question. Please repeat it.

Q. When you originate a car on the Milwaukee in Oregon or Washington, for example, a transit car, you can roll that over the Milwaukee and divert it to any point east of Minnesota Transfer, east of Chicago, or in southeastern territory, can you not?

[fol. 1624] A. Yes.

Q. Now, in your utilization of the Milwaukee Railroad, do you consign some cars to Canton, South Dakota, for diversion?

A. Yes.

Q. Those cars that are consigned to Canton do not terminate there, do they?

A. No.

Q. That's not the final destination?

A. No.

Q. As a matter of fact, you have no customers in Canton who would receive any cars from you, is that correct?

A. That is right.

Q. Canton is not on the main direct route of the Milwaukee Railroad from the Pacific Coast to Minnesota Transfer or to Chicago, is it?

A. No.

Q. It's on a branch line leading south from Bristol, down through Sioux Falls to Sioux City, some distance south of the main line, is that correct?

A. That's my understanding.

Q. And it is not on the Milwaukee's main line over which it operates through trains from Aberdeen to Omaha, isn't that right?

A. I don't know. I'm not familiar.

Q. Why do you select Canton, South Dakota, as a diversion point for your shipments routed over the Milwaukee? [fol. 1625] A. We can get cars into the southwest as well as eastern territory.

Q. Well, you could select Aberdeen, a point on the direct main line, just as readily, could you not?

A. Yes.

Q. Why do you select a point, through which the Milwaukee operates none of its through transcontinental trains, as a diversion point?

A. A matter of convenience, if for no other reason.

Q. For what convenience?

A. Habit, as much as anything.

Q. How did that habit start with you?

A. Takes a little longer for the car to get there, than it would through Aberdeen.

Q. That's the consideration for consigning a car to Canton? Because it would take longer to get there?

A. That's one of the reasons, yes.

Q. Canton being off the main line?

A. Yes.

Q. As a matter of fact, that's the point you customarily use as a diversion point for shipments on the Milwaukee, isn't it?

Mr. Maguire: Just a moment before you answer that, Mr. Alexander.

I have refrained from objecting to a few of the previous questions because I thought they might possibly be leading [fol. 1626] towards some relevancy in this case, but it now appears that Mr. Torinus is questioning Mr. Alexander upon shipments which do not originate in the origin territory involved in this case, which originate at points on the Milwaukee Railroad, rather than on the SP&S System, and I fail to see any connection between such traffic and the issues in this case.

Mr. Torinus: I'll withdraw that particular question, Mr. Maguire.

Mr. Maguire: And I move that the other questions regarding the consignment of cars—the questions and the answers to them—regarding the consignment of cars to Canton be stricken as not being within the issues of this case.

Exam. Dishman: What was the purpose of those questions?

Mr. Torinus: Mr. Examiner, I think the purpose will become apparent from my next question if I might be permitted to ask it.

Exam. Dishman: I see.

Mr. Maguire: Of course, now, I might offer this comment, Mr. Examiner: It seems to be rather difficult to have Counsel explain—to get them to explain the relevancy of their questions. They always say, "Let me get away with this one, and maybe I'll get to the point with this one."

I think you should explain it now before the next question. I think we should have a ruling on the question.

Exam. Dishman: Let him ask the question.

[fol. 1627] Mr. Hillman: May I make this one point? Mr. Torinus, I assume that you're willing to withdraw your question, not because you agree with Mr. Maguire's theory as to its relevance as to shipments originating on Milwaukee points?

Mr. Torinus: The reason is that I wish to avoid an extended argument with Mr. Maguire. I don't think the question was important enough to go into that.

Exam. Dishman: Let's proceed with the next question.

By Mr. Torinus:

Q. Mr. Alexander, if the Milwaukee is successful in this case and secures through routes and joint rates from points on the SP&S System lines via the Milwaukee Railroad east of Spokane to the entire United States east of Spokane, you would expect to be able to utilize, would you not, Mr. Alexander, from origins on the SP&S, Canton, South Dakota, as a diversion point?

A. No, that would not be the purpose.

Q. I didn't ask what the purpose was. I asked you whether or not you would expect to be able to utilize Canton.

A. I would not expect to utilize it.

Q. You wouldn't expect to?

A. I would not expect to utilize it.

Q. Then the habit, which you have followed with respect to shipments originating on the Milwaukee, where you have used Canton customarily as a diversion point, you don't expect that would necessarily be followed through with re-
[fol. 1628] spect to any shipments you might originate on the SP&S?

A. No, I do not.

Q. Now, certainly, Canton would be available as a diversion point under the tariffs, wouldn't it?

A. The Northern Pacific and Great Northern have just as good diversion points.

Q. Answer the question with respect to shipments originating on the SP&S and rolling over the Milwaukee. Canton, South Dakota, would be available to you under the tariffs, would it not, as a diversion point?

A. Apparently so.

Q. And if you wished to indulge in that habit again, it could be done, could it not?

A. Apparently that would be available, yes.

Q. By the way, Mr. Alexander, do you know what service, railroad service, the Milwaukee provides over that branch extending south of its main line from Bristol through Madison, Sioux Falls, Canton, down to Sioux City?

A. I'm not familiar with it, no.

Mr. Torinus: I have no further questions.

Exam. Dishman: Mr. Maguire, your motion to strike?

Mr. Maguire: I think I'll withdraw that motion, Mr. Examiner.

Exam. Dishman: All right.

Mr. Maguire: That was an interesting field of inquiry.

Mr. Musenbrock: There is one additional question I have.

[fol. 1629] By Mr. Musenbrock:

Q. Mr. Alexander, Mr. Torinus asked you, if the complaint here were granted and this new route of the Milwaukee were opened, whether you would use Canton as a diversion point, and you said, "No", and I think you volunteered the statement that because there were just as good diversion points on the Great Northern and NP. That's correct, is it?

A. Yes.

Q. Did you mean to imply by that that, even if the complaint were granted and the new rates of the Milwaukee were inaugurated, you wouldn't use that service?

Mr. Maguire: Now, just a moment before you answer that, Mr. Alexander.

Exam. Dishman: I think he's asking him what he meant.

Mr. Maguire: Yes, but I wish to interpose one objection here because I think Counsel has, and I'm not saying it as any insinuation of any misconduct on his part, but I think he has unconsciously dovetailed two separate matters together.

My recollection of the witness' testimony was not that he would not use the Canton route because he had just as good routing over the NP and GN. He, in answer to another question of Mr. Torinus, he interposed to Mr. Torinus' discomfiture the statement that there was just as—

Mr. Torinus: I'll object, Mr. Maguire, to your stating what the witness said. We've had enough of this in this record.

Mr. Maguire: I think it should be two-sided. I should be [fol. 1630] able to state something too.

Mr. Musenbrock: Mr. Examiner, I think that points up the problem. Let the witness explain what he does mean.

Exam. Dishman: Yes. As I understood it, your question was more on the line of clarification, was it? You want it clarified?

Mr. Musenbrock: I want it clarified why he wouldn't use Canton as a diversion point if the new through routes were available over the Milwaukee, because he said that he wouldn't use it because the NP and the Great Northern had just as good diversion points.

Exam. Dishman: I think it's time for the witness to do a little talking now.

Do you understand what they're driving at here?

The Witness: I believe I do. My answer is strictly selfish. I want to sell lumber. I'm not interested in short hauling one railroad or another, the delivering line or the originating line. I want convenience, and I want open rates.

Right now, we are restricted on freedom of merchandising at many points west of Minneapolis and St. Paul, and I feel, if the rates were opened up, that we would be getting away from that.

Exam. Dishman: Is that an answer to the Counsel's question?

The Witness: I believe it could be considered an answer. He asked me if I would particularly use Canton, and I [fol. 1631] wouldn't unless the stock originated on the Milwaukee Railroad. I'd try to give them a maximum haul if they were originating equipment, the same as I would give the Northern Pacific or the Great Northern the maximum haul from originating equipment and merchandise on their line, or any subsidiaries of their lines.

By Mr. Musenbrock:

Q. I think that's partially an answer, Mr. Alexander. Did I understand from your statements to Mr. Torinus that you use Canton at the present time for southwest destinations?

A. For that convenience, yes.

Q. That's right. So that, even if this new rate were put in over the Milwaukee, you wouldn't need Canton to the southwest. You have diversion points now on the NP and the Great Northern to the southwest, don't you?

A. That's right. I use Canton on Milwaukee local origins.

Q. That's right, and you would find no need for it on this other business, that is, off the SP&S?

A. That's right.

Mr. Musenbrock: Thank you.

Mr. Golden: I have a question.

By Mr. Golden:

Q. I would like to see if I'm clear on this—this may be repetitive, Mr. Examiner—as to your plant at Waterloo, as to where it is concerned. You merely want rates so you can get into local Milwaukee territory?

A. That is right.

[fol. 1632] Q. And you do not contend that you need that route for any other territory beyond Chicago?

A. That's right. That's a production plant, and we like to sell ahead. Now, that might be confusing in relation to the wholesale business where we do a general wholesale business and a transit business. At the production plant, we like to sell ahead.

Mr. Golden: That's all.

Mr. Torinus: May I ask a question brought about by something Mr. Musenbrock asked?

Exam. Dishman: Yes.

By Mr. Torinus:

Q. You don't confine your consignments to Canton, South Dakota, for diversion, to shipments ultimately that go to the southwest, do you?

A. At the time we consign them, we don't know where they're going.

Q. So, you consign them to some point off the main route, some local point, instead of a main line point because, as I understood your answer a while ago, because it takes more time to get there, is that it?

A. That's right.

Mr. Torinus: I have nothing further.

Mr. Boe: May I ask a question?

Exam. Dishman: All right, Mr. Boe.

By Mr. Boe:

Q. The term "southwest" has been used rather freely in [fol. 1633] your testimony here in both questions and answers. What are the states that you include in the term "southwest"?

A. Primarily Oklahoma and Texas; not very far west.

Q. Did you hear the previous witnesses testify that the southwest included as far west as California?

A. No, I didn't hear it, but I don't consider it such in relation to my business.

Q. Did I understand about 95 per cent of your business moves to eastern territory?

A. Yes, sir, at present.

Q. And I take it you mean by that, territory generally east of the Mississippi River?

A. Yes; specifically Michigan, Ohio, Pennsylvania, Indiana.

Q. And how are shipments to that territory routed now? Through the transfer?

A. Largely through the transfer, largely from the production plan at Waterloo, it all moves through the transfer. Other lumber off the Southern Pacific, it moves through Omaha transfer.

Q. You use either the Minnesota Transfer gateway for traffic that originates on the SP&S?

A. Yes.

Q. And you use the Omaha gateway for traffic that originates on the Southern Pacific?

A. That's right.

[fol. 1634] Mr. Boe: That's all I have. Thank you.

Mr. Hillman: I have a question.

By Mr. Hillman:

Q. Mr. Alexander, do you have many or any firm sales in your eastern territory? That is, east of the Chicago gateway?

A. Oh, yes.

Q. A substantial amount of your sales are firm in that territory?

A. Well, the word "substantial" is relative.

Q. It certainly is, I grant you.

A. It varies from time to time. We're always trying for it. If we get more, we get a lot. If we get less, we get a little. It's a very competitive business.

Q. Do I understand correctly, sir, that some of this traffic, lumber traffic, that goes to points east of Chicago, originates on the SP&S and some of the lumber originates on the lines of the Milwaukee?

A. Oh, yes. We don't care where we get it. If we can't furnish it from our own production, we'll get it from wherever we can get it.

Q. And then to carry the story a little further, that lumber at the present time, which originates on the SP&S, moves into the Minnesota Transfer on the Great Northern or Northern Pacific?

A. Yes.

Q. And that which originates on the Milwaukee comes [fol. 1635] into Minnesota Transfer on the Milwaukee?

A. That's right.

Q. Now, sir, I don't necessarily want you to make an estimate of this which is too rough, however, if you have any knowledge of it, I'd appreciate your answering as exactly as you can.

As between the traffic which comes into the Minnesota Transfer on the Milwaukee, on the one hand, and that which comes into Minnesota Transfer on the Great Northern and Northern Pacific, on the other hand, and which is routed through Chicago, would you say that the Milwaukee carries any higher percentage of such traffic, which comes into Minnesota Transfer on its own line, than it does on the traffic which comes into Minnesota Transfer on the Northern Pacific or Great Northern?

Mr. Maguire: Pardon me. Are you restricting that to Mr. Alexander's firm's shipments?

Mr. Hillman: I am, yes.

Mr. Maguire: His firm's shipments—apostrophe "s"?

Mr. Hillman: Pardon me, Mr. Maguire. You said "firm's". I mean "firm" in both senses.

By Mr. Hillman:

Q. Your firm's firm shipments?

A. What I think your question means, what you're trying to find out is business billed through the transfer, going east of Chicago, and you're trying to find out if we take the business away from the Milwaukee at the transfer. Is that what you're trying to find out?

[fol. 1636] Q. That may be one way of stating it, Mr. Alexander. What I'm trying to determine is whether the Milwaukee manages to handle a larger percentage of the traffic which it carries into the Minnesota Transfer—that is, between Minnesota Transfer and Chicago—than it does of the traffic which comes into the Minnesota Transfer on the other two northern lines.

A. Well, we seldom give the Milwaukee any traffic that comes into the transfer on the other lines.

Q. And what about the traffic which comes into the transfer wholly Milwaukee?

A. Well, we give it to them. If we take it to Chicago, we let them have it. If we take it to Milwaukee, they can have it.

Q. That's your past practice?

A. Yes. Our practice is to give the originating line the maximum haul, and the delivering line the maximum haul.

Q. Another question, sir: Would that also apply if the Milwaukee's proposal here is granted and the Milwaukee picks up traffic at Spokane and carries it into Minnesota Transfer? Would you follow that same practice of keeping it on the Milwaukee if they carried it into the transfer and it was going to Chicago?

A. Well, that's projecting into the future. I wouldn't say what I would do.

Q. Well, would the same considerations, which cause you to keep the traffic on the Milwaukee now, which the Milwaukee carries into the Minnesota Transfer, apply to the [fol. 1637] traffic which the Milwaukee might carry from Spokane to the Minnesota Transfer?

A. Well, I would have no infention—speaking at this time, I would have no intention of giving the Milwaukee at Spokane business which originated SP&S unless it was actually to the territory in which I was primarily interested

in increasing my business in, and that's west of Minneapolis and St. Paul and western Minnesota and the Dakotas.

That's where this matter primarily lies as far as I'm concerned.

Mr. Hillman: That's all.

By Mr. Golden:

Q. You wouldn't consider short hauling the Great Northern or Northern Pacific?

A. No, unless the Milwaukee is the only one that makes—

Q. No. I mean the Milwaukee business that originates on the SP&S.

A. No. That would be short hauling an intermediate line, the originating line. That's my policy, right or wrong.

By Mr. Hillman:

Q. Now, as to some of this traffic which may be destined to points local to the Milwaukee, some of that may be firm, and some of it may not be, is that correct?

A. It mostly would be firm orders due to the nature of the customers to which the lumber goes. There's no large metropolitan areas there that specifically require merchandise, my merchandise.

Q. Well, sir, as to your firm sales to points local to the [fol. 1638] Milwaukee, it's my understanding, although I may be corrected perhaps, that you do have through rates to local Milwaukee points from the SP&S at the present time?

Mr. Rockwood: Not from the Santiam Branch.

The Witness: Not from where our plant is located.

Mr. Rockwood: He's on the Santiam.

Mr. Hillman: I'm sorry. That's one fact I didn't consider.

By Mr. Hillman:

Q. And from that branch, there are no through published rates at all, is that right?

A. That's right.

Mr. Rockwood: That's right.

Mr. Hillman: I have no further questions.

Redirect examination.

By Mr. Maguire:

Q. Mr. Alexander, with reference to this Canton, South Dakota, routing, do you also utilize a routing over the Northern Pacific which loops down off its main line—when I say "main line", I mean the main traveled line—say, from Jamestown, North Dakota, through Oaks, North Dakota, and then divert it from there east?

A. Yes, we do.

Q. And is that following the heavily traveled route of the Northern Pacific?

A. I understand not. It's what's called the daylight route, I believe.

Q. And you also remarked that there were also conven-[fol. 1639] ient routings similar to the Oaks routing and the Canton routing via the Great Northern?

A. None that I specifically use.

Q. I see. Now, then, you are primarily interested in reaching without penalty, you said, some of the Dakota and western Minnesota local points on the Milwaukee?

A. Yes.

Q. Since the last hearing, have you had any difficulties in that respect?

A. Yes, I have.

Q. Will you tell us about them?

A. Well, I should know better, but I took on some business for our mill at Waterloo, from Lebanon for a retail yard concern, a retailer having a yard in several locations. So, I took on the business at a rather favorable price to the buyer because we had the stock on hand and could ship it promptly.

The order came in, and they were orders for various destinations that I hadn't given due consideration to previously. The first car I shipped was billed, I believe, to Wheaton, Minnesota, and then I was informed later that it wouldn't work, and I think we got the nine cents local on that.

So, we returned the rest of the order to the buyer because we couldn't buy at a profitable price outside where the rates wouldn't apply.

Q. And was this stock that you were going to fill the [fol. 1640] orders from located upon the Santiam Branch?

A. Yes, that was at the plant at Lebanon.

Q. Now, then, when you—would it entirely satisfy you, if you are given rates which will allow you without penalty to ship into western Minnesota and Dakota points? Would it be entirely satisfactory to you if you do not have any place to go outside the Milwaukee local territory in case those shipments are refused?

A. Well, it wouldn't wholly satisfy me. It would be a step in the right direction. We'd get to those points, and then, if we had difficulty with the buyer, then I don't know what we'd do.

Q. Well, would you state whether or not you would find it desirable in connection with those rates to have the right to divert off the Milwaukee Railroad onto its connections in case you can't dispose of it?

A. Very desirable.

Mr. Maguire: That's all. Thank you.

Mr. Rockwood: That opens up a brand new subject.

Recross examination.

By Mr. Rockwood:

Q. Mr. Alexander, how many cars in the past year shipped out of your mill at Waterloo have been refused by the buyer at destination?

A. Oh, not many.

Q. How many?

Mr. Maguire: If you know.

[fol. 1641] The Witness: I don't know, and what difference would it make?

By Mr. Rockwood:

Q. It would make a lot of difference to me and Mr. Maguire.

A. Well, I'll tell you, Mr. Rockwood, the percentage of cars that are refused by buyers at destination hinges an awful lot on people shipping them in the first place, and, if you've been in this business for a while, you try to avoid those things ahead of time.

Q. Have you been able to avoid it so you don't have cars refused?

A. We certainly try to because it's very expensive.

Q. And if there is a question between you and the buyer at destination, usually it's settled without diversion to another point, isn't that correct?

A. If we can possibly do it, yes.

Q. That's what you try to do, and that's what you did do on most occasions?

A. It's a matter of weighing dollars and cents, one way or the other.

Q. Now, if you have one of your transit cars which isn't sold before it starts out, and then it is sold on the way, and you divert it to the destination, and it reaches its consigned destination after diversion, and it is refused or you have any trouble with the buyer, that is just exactly the [fol. 1642] same kind of a situation as you might have on the Milwaukee where you couldn't divert off the Milwaukee, isn't it?

A. Because we're allowed one diversion.

Q. Right. So that, after that one diversion of cars, the term "pocket" has been used, you're in a very small pocket and you can't divert anywhere, that's true, isn't it?

A. That's right.

Q. That's right, and on the Milwaukee, if you got one refused that you shipped from the Santiam to Wheaton, Minnesota, on the Milwaukee, and it were refused, you'd have at least all the rest of the Milwaukee territory to which you could divert and dispose of that car, isn't that true?

A. That's pretty sparsely populated country.

Q. Is Milwaukee, Wisconsin? There's a big ball team there. That isn't sparsely populated?

A. They're awfully shrewd buyers too.

Q. And Des Moines, Iowa, is that sparsely populated?

Mr. Maguire: At Des Moines, they don't apply, Mr. Rockwood, I see by the map.

The Witness: See, we wouldn't use the diversion privilege. I mean I don't think the two problems are parallel.

By Mr. Rockwood:

Q. Well, it would be a firm sale there, but, if it was refused, you would have all the rest of the Milwaukee territory to get rid of it without paying a local rate, wouldn't you?

[fol. 1643] A. But we'd still be restricted, however, to Milwaukee territory.

Q. To Milwaukee territory?

A. Yes.

Q. But if a diverted car, once diverted, were refused at destination, you're stuck with it right there and can't move it anywhere except at a local rate?

A. That's the hazard of our business.

Q. That's right, but that is the fact in the business, isn't it?

A. Yes.

Mr. Rockwood: That's all.

By Mr. Torinus:

Q. Mr. Alexander, Mr. Maguire on redirect asked you to testify if there was a route on the Great Northern similar to the Canton, South Dakota, route, and you answered, as I recall it, you hadn't used any such route. Is there such route on the Great Northern?

A. At one time, we could put cars via Willmar.

Q. Is there such a route on the Great Northern presently available to you, which permits the cars to be held for diversion at a point not on the Great Northern's main line?

A. I don't know.

Q. Is there—

A. I don't use such a point.

Q. Is there a so-called slow route on the Great Northern?

A. Not that I use. I don't use the Great Northern for [fol. 1644] purposes of slow service.

Q. You don't know if they have a slow route?

A. Not at present.

Q. Isn't that why you don't use the Great Northern?

A. Not particularly. I use the Great Northern. We give quite a little business to them.

Q. I didn't so understand from your testimony.

A. I don't use the Great Northern in connection with my transit privileges.

Q. You say you don't use the Great Northern in connection with your transit privileges?

A. Yes, I believe that's what I said.

Q. That's what you said, and the reason that you don't use the Great Northern for your transit privileges is because in a transit business such as you conduct a slow route is desirable, and the Great Northern doesn't have a slow route, is that a fact?

A. They don't solicit my business on that basis. Beyond that, I don't know.

Mr. Torinus: I have no further questions.

Mr. Maguire: I have a couple more suggested by cross examination.

Redirect examination.

By Mr. Maguire:

Q. Mr. Alexander, with reference to the questioning by Mr. Rockwood as to a shipment of a firm sale which is [fol. 1645] refused, for example, where he said that you have the rest of the Milwaukee territory, local territory, to dispose of that shipment, do you recall that line of questioning?

A. Yes.

Q. Well, now, where you have a similar shipment which is billed to a point on the Northern Pacific or Great Northern from points on the SP&S, you not only have the Northern Pacific and Great Northern, but you have the rest of the United States to dispose of it, haven't you?

A. That's right.

Mr. Maguire: I'll ask the Examiner's indulgence. This next question is not prompted by this line of cross examination we last had. It is one which I overlooked asking Mr. Alexander.

By Mr. Maguire:

Q. Now, with respect to transit cars which originate on the SP&S System, and, particularly, so far as your business is concerned, upon the Santiam Branch, if through rates were available, such as sought by the Milwaukee here, will you state whether or not you would consider shipping transit cars through Spokane, thence via the Milwaukee, to reach the intermediate territory between Spokane and the Twin Cities, for example?

A. I don't believe I would try it because, as I related before, that general territory that I'm thinking of is sparsely populated, and that territory has a definite or specific use of merchandise.

[fol. 1646] Q. And you deal in both classes?

A. Yes.

Q. So that, so far as your business is concerned, it would be the definite use merchandise that would go over the Milwaukee?

A. That is right.

Mr. Maguire: That is all. Thank you.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: I have one other witness available this afternoon, Mr. Examiner, who, I rather imagine, will take approximately the same length of time as Mr. Alexander, although I cannot prophesy.

Exam. Dishman: All right.

Mr. Maguire: Call Mr. W. P. Duncan. Mr. Duncan's direct testimony in the June hearing commenced on Page 507 of the transcript.

W. P. DUNCAN having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Duncan, on Page 509 of the transcript, you stated that 60 per cent of your business was firm business, and 40 per cent transit cars. You were then asked the annual volume of lumber which you wholesaled either by firm orders or on transit cars, and your answer was roughly 1,000.

[fol. 1647] Is that the situation today as it now exists?

A. I think that in 1954 we shipped somewhat less than a thousand cars; probably between 750 or 800 cars.

Q. In the year 1954, from what points on the SP&S did you purchase lumber at wholesale?

A. Wauna; Eugene; Westport, I believe; Vernonia; and Salem.

Q. Did you buy any from Lebanon?

A. I don't believe we did.

Q. Sweet Home?

A. Yes, sir, Sweet Home and Foster.

Q. Both on the Santiam Branch?

A. Yes, sir.

Q. Those are, in general, the sources from which you purchased lumber when you were testifying in June of '54, when you stated Wauna, Westport, Eugene, Lebanon, Sweet Home, and you said you had not bought any from Astoria for some time, I believe, not for some 18 months had you bought any in Astoria.

Of your total sales in a year, are your percentages of firm and transit cars as you testified last year?

A. Yes, sir.

Q. About 60 and 40?

A. Yes.

Q. Of a thousand cars a year, or possibly somewhat less, that includes cars which you buy from mills on the Southern Pacific?

A. Yes, sir.

[fol. 1648] Q. Did you also buy any on the Oregon Trunk, in that territory?

A. No, sir, not very often. I don't think we did last year.

Q. So, did you include anything on the Union Pacific line between here and The Dalles?

A. No, sir.

Q. So that except for these—do you buy any in Washington on the Northern Pacific or Great Northern?

A. Yes.

Q. Anything on the Milwaukee, locally on the Milwaukee?

A. Yes, sir.

Q. Of the total of 1,000 cars, what is your estimate of the quantity that you purchase from mills served by the Southern Pacific, either solely or in competition with the SP&S?

A. Ten per cent.

Q. And 90 per cent of your buying is from mills other than Southern Pacific mills?

A. Yes, sir.

Q. How much from mills on the Oregon Electric?

A. I was including the Oregon Electric mills in the Southern Pacific. Wasn't that your question?

Q. Well, no, no. I'm asking—maybe you misunderstood me. What percentage do you buy from mills served solely by the Southern Pacific, or by the Southern Pacific and Oregon Electric?

A. Well, 10 per cent is acceptable, approximately.

[fol. 1649] Q. Where are the major part of your purchases?

A. They're made in Washington and British Columbia.

Q. So, how many in the entire state of Oregon?

A. Probably 25 per cent.

Q. How much of your total would be from Oregon Electric mills served solely by the Oregon Electric or SP&S?

A. We don't keep our records so that I'm very familiar with these percentages, and, mathematically, my answer is supposed to be 15 per cent, but I'm afraid that I'm a little bit off on that because we buy more from mills served by

the Southern Pacific and Oregon Electric jointly, which was your first question, than we do from mills served solely by the Oregon Electric.

Q. Well, it surprised me to find that the percentage was so small from the Southern Pacific and Southern Pacific-Oregon Electric. Actually, of the classifications which we've given, the purchases from solely Oregon Electric mills, would that be the least?

A. Yes, sir.

Q. The smallest of the classifications we have discussed?

A. Yes.

Q. And of those Oregon Electric purchases, are the major part from Wauna and Westport on the Lower Columbia line, or are they from Lebanon and Sweet Home on the Santiam line, or are they on the line of the Oregon Electric other than the Santiam Branch?

[fol. 1650] A. I think the major portion of the purchases would be made on the Oregon Electric other than the Santiam Branch, between Portland and Eugene. The next would be the Santiam Branch, and last would be the SP&S, the Lower Columbia Branch.

Q. Now, of course, in the Willamette Valley between Portland and Eugene, that is the area in which there is most extensive competition between the Oregon Electric and Southern Pacific. That's true, isn't it?

A. Yes, sir.

Q. And from many mills in that area, you have the choice of Oregon Electric or Southern Pacific, do you?

A. Yes, we do.

Q. And, of course, on Southern Pacific routing, you can go in connection with the Union Pacific either via Portland or via Ogden, that's correct, isn't it?

A. Yes, sir.

Q. And you can also via Portland use the Union Pacific to Marengo and thence Milwaukee?

A. Yes, sir.

Q. And that's the major location of your purchases in Oregon?

A. Yes, sir.

Q. As between firm and transit purchases, was that 40-60,

or 60 firm, 40 transit relationship, does that apply to the purchases in Oregon, as well as to your total purchases? [fol. 1651] A. No, sir. Our purchases of transits in Oregon would probably be less than 10 per cent of our transit purchases.

Q. Less than 10 per cent of your transit purchases?

A. Yes, sir. Practically all of our Oregon purchases are firm orders.

Q. Have you been shown, Mr. Duncan, these pages, which are 20 and 21 of the document which is identified in this record as Exhibit No. 17?

A. Yes, I'm familiar with that.

Q. That was shown to you by Mr. Maguire or by a representative of the Milwaukee?

A. Yes, sir.

Q. Since it was identified in November of last year?

A. Yes.

Q. Have you made any investigation of the possibility of compiling that data?

A. Yes, sir. We considered it and, because of the time involved and the expense in compiling such a record from the records we keep, we just said it wouldn't be possible.

Q. When were you shown this sheet, Mr. Duncan? Within the last week or 10 days?

A. I believe it was about two weeks ago.

Q. Two weeks ago. By Mr. Maguire?

A. Yes, sir; yes, two or three weeks ago.

Mr. Maguire: About two weeks ago. I haven't been out [fol. 1652] here that long.

Mr. Rockwood: We'll make you pay poll tax if you stay any longer.

By Mr. Rockwood:

Q. It's possible to compile that information from your records, but it would take, you would say, some time?

A. Yes, sir. We don't care to disclose a lot of that information.

Mr. Rockwood: That's all the examination I have.

Mr. Torinus: I have no questions.

By Mr. Golden:

Q. Mr. Duncan, you like open routes, don't you?

A. Yes.

Q. Is that your principal reason for being here today?

A. Yes, sir.

Q. Do you know whether you would use the route of the Milwaukee via Spokane if it were open at this time? Do you know?

A. No, I don't know.

Mr. Golden: That's all.

Mr. Boe: I have a question.

By Mr. Boe:

Q. Mr. Duncan, do you recall in your previous appearance as a witness here Mr. Maguire asked you this question about your business:

"And so far as the Duncan Lumber Company is concerned, are you wholesalers of lumber and forest products?"

"Yes."

"And over what part of the United States do you market [fol. 1653] lumber?"

"Oh, all over the United States with probably the exception of California?"

A. Yes.

Q. Is that principally the extent of your operations?

A. Yes, sir.

Q. Could you say generally as to what proportion of your business has been done east of the Mississippi River?

A. Oh, I'm sure it's greater than 50 per cent.

Q. And what proportion would you say is done between a north and south line which, say, runs roughly through Omaha and Kansas City on the west and the Mississippi River?

A. Probably 50 cars a year. That would be five per cent.

Q. Now, with respect to this great volume of business—the greater volume of business that moves east of the Mississippi River, does that move at the present time through the Minnesota Transfer?

A. The major portion of it does.

Q. And the balance of it moves through the Omaha gateway, does it?

A. Yes, sir.

Q. Now, as far as the present routings are concerned, does the Milwaukee participate to any extent in the volume of traffic that moves through the Minnesota Transfer gateway for eastern territory?

[fol. 1654] A. Yes, sir. We quite frequently route cars NP to transfer, Milwaukee to Chicago, and thence east.

Q. And I take it from your answer, there are other carriers that you do select east of the Minnesota Transfer, moving your traffic through Chicago to eastern destinations, is that right?

A. Yes, sir. We try to give traffic to all the lines.

Q. And if the Milwaukee should be successful here, what would be your practice with respect to movements of the traffic through Minnesota Transfer to Chicago to eastern territory?

A. I don't know what our future practice would be, but, if we follow the same habits we've had in the past, we would divide the traffic up among the carriers that serve Minneapolis to Chicago.

Q. Let me ask you this: Would you modify your present practice any, if the Milwaukee should be successful in this case, in obtaining the routing—

A. I think not.

Q. —that it seeks?

A. I think not.

Q. With respect to the territory between the Mississippi River on the east and the territory roughly west of a north and south line that would go through Kansas City and Omaha, what would be your practice if the Milwaukee should be successful?

A. I'm not sure that we could serve that territory with transit cars, and, as far as the firm business is concerned, [fol. 1655] when we place the order, we determine the routing, and I see no reason why we should change this practice that we've been following, regardless of the way this case is determined.

Mr. Boe: I believe that's all. Thank you.

By Mr. Musenbrock:

Q. Well, Mr. Duncan, as a shipper—following up Mr. Boe's questions there—as the shipper, in the event the Milwaukee were successful, you wouldn't be receiving any new service east and south of the Minnesota Transfer that you're not now receiving by other connections, including the Milwaukee?

A. As far as I know, we wouldn't.

Mr. Musenbrock: That's all.

Redirect examination.

By Mr. Maguire:

Q. Mr. Duncan, I note in your statement of your 1954 volume, which was less than that shown for your testimony made in June of last year, did the lumber strike affect your 1954 volume of business?

A. Very definitely.

Q. And that was the reason that it declined?

A. I think it probably was.

Q. Now, as to the utilization of the route from Spokane to east thereof over the Milwaukee, if it is thrown open by —if rates are available over that route, effective rates, you stated that you did not know what effect that would have upon your business, that is, the routing of your business, if the Milwaukee won the case?

[fol. 1656] A. Yes.

Q. Is the utilization of routes dependent to any degree upon the then current pattern of your business and your sales?

A. I'd say it's completely dependent upon that.

Q. And is that why you say you cannot state at this time what use you'll make of it?

A. That's correct.

Mr. Maguire: That's all for me.

Recross examination.

By Mr. Rockwood:

Q. What is inherent in the pattern of sales that completely controls the routing which might lead you to use the Milwaukee route or refrain from using the Milwaukee route to the Minnesota Transfer?

A. In our business, we can oftentimes get to a destination by utilizing any combination of several railroads, and we determine, at the time that we are making the purchase, the routing that is to apply on firm business, and the thing that determines what routing we use is salesmanship on the part of the solicitors from the railroads, and other matters that might enter it, such as service, and the customer's wishes as far as the delivering line is concerned, and the desires of the originating mill if they have expressed them as to whether—at competitive points, whether we should put it over one line or another.

Q. In the pattern of your business, you mean simply the [fol. 1657] matter of shifting of sources of supply and—

Mr. Maguire: Pardon me—go ahead.

By Mr. Rockwood:

Q. —and possible shift in the desires of the manufacturers as to the routes they would like to have you use, and the possible shift in the desires, the expressed desires of the customers, east of Minnesota Transfer as to what line they want as the delivering carrier, is that right?

Mr. Maguire: Just a moment before you answer that.

Mr. Examiner, the witness had already stated what he meant by the change in the pattern. Now, Mr. Rockwood comes in with a paraphrase which I do not believe is an accurate paraphrase, and I think the witness, having already answered the question, should not be required to swallow this sugar-coated pill which Mr. Rockwood is putting up to him at this time.

Exam. Dishman: Was that an accurate paraphrase of your testimony?

Mr. Maguire: Or do you prefer to—

Mr. Rockwood: I believe the witness should be allowed this chance as to whether his former answer should stand as an answer to this question.

The Witness: It's my interpretation of Mr. Rockwood's question that I would repeat what I previously said if I answered it correctly.

By Mr. Rockwood:

Q. I'm not going to press the point, but did you think that I was abusing you or trying to hand you a trick ques-[fol. 1658] tion when I made that summary?

A. Not till Mr. Maguire stepped up.

Mr. Maguire: It's a good thing you get good protection here, Mr. Duncan.

Mr. Rockwood: I have nothing further.

Exam. Dishman: Any further questions?

Mr. Hillman: Yes.

By Mr. Hillman:

Q. Mr. Duncan, I believe that you stated in reply to one of Mr. Rockwood's questions that one of the factors which would influence your routing was through salesmanship?

A. Yes.

Q. And reference has been made to a traffic statement issued by the Milwaukee in conjunction with—I believe it's in support of their proposal—that it was stated to shippers over this route, if it became available, that they'd have the advantage of a single line haul to Minnesota Transfer, and it was indicated, therefore, that solicitation of traffic would be made on that basis.

Would that sales point be a material factor to you?

A. Well, I—

Mr. Maguire: Just a moment before you answer that, Mr. Duncan.

I think that Mr. Hillman is trying to unscrew the inscrutable with that kind of a question because he's trying [fol. 1659] to get this witness to weigh the relative merits of the sales talks that have been put up already, and I think

it's the relative sales talks that will be put up in the future that this witness is waiting for.

Exam. Dishman: Is that right?

The Witness: Yes, sir. It will depend upon the salesmanship that is utilized at the time we have an order at the place and a routing to determine.

By Mr. Hillman:

Q. Well, Mr. Duncan, it's been clearly indicated that this will be a sales point which will be stressed rather heavily. Is it a point which you would feel of importance in determining your routing?

A. I see no reason why it would be now because in a case like that we're concerned with service and other factors, and there is no reason why we should route a car SP&S, Milwaukee, Minnesota Transfer, any more than there would be a reason for routing it SP&S, Northern Pacific or Great Northern.

Q. Of course, I had particular reference, Mr. Duncan, as to Minnesota Transfer, as to the point that was made in the statement that a single line haul from Minnesota Transfer would be available to Chicago, for example, without ever having to get off the Milwaukee once it got to St. Paul and Minneapolis.

A. That isn't our present practice, and I see no reason why it would change.

Q. Are you solicited on that basis now as to shipments [fol. 1660] which go to the Minnesota Transfer now on the Milwaukee which are destined to Chicago?

A. We route cars NP, Minnesota Transfer, Milwaukee, because it is solicited on that basis now, and the railroad carriers also solicit business for the maximum haul, but since we have a number of people who are soliciting our business, we try to divide the business up for them.

Q. Well, sir, you understand, of course, that the NP doesn't go down to Chicago?

A. They'll have to put another line in from Minnesota Transfer to Chicago.

Q. I'm referring to a situation, for instance, if the Milwaukee was granted this proposal here, it would be, in a sense, that there would be available a single line haul from

Minnesota Transfer, a situation which is not available now. It's been indicated that that would be a strong sales point.

I was wondering what effect that would have on your routing of traffic.

A. I can't see where it would be any particular sales point as far as we're concerned. With the kind of service that we want, we would get a satisfactory service by routing a car Milwaukee to the transfer and then some other line to Chicago.

Mr. Hillman: I see. Thank you.

Exam. Dishman: Are there any more questions?

Mr. Maguire: Just one more.

[fol. 1661] Redirect examination.

By Mr. Maguire:

Q. Mr. Duncan, in view of your last remark to Mr. Hillman, would the fact that a new route is available, a new route over which competitive rates are available, if it would be open to you, if the Milwaukee should prevail in this case, would that be taken into consideration in your distribution of business between different lines which are in competition with each other?

In other words, would you, according to your usual practice, divide a portion of that business to the Milwaukee through Spokane to the transfer, everything else being equal?

A. I think so.

Mr. Maguire: That's all.

Recross examination.

By Mr. Musenbrock:

Q. Mr. Duncan, along that same line—I hope I'm not duplicating something that has gone before—but under the present situation, because the Northern Pacific and Great Northern only operate to the transfer, you're compelled to connect with other railroads at the transfer to test the market in Iowa, Illinois and southern Minnesota, are you not?

A. Yes.

Q. But by the very physical fact that the Northern Pacific and the Great Northern themselves do not go into quite a bit of that territory, you are so compelled to route the cars, that's correct, is it?

[fol. 1662] A. Yes.

Q. Now, you are also appreciative that the Milwaukee has a vast amount of trackage in Iowa and in southern Minnesota?

A. Yes.

Q. Now, if this rate were to go into effect, you could have a single line all the way from Spokane, testing the market west of the Twin Cities, and with all of the trackage, mileage of trackage of the Milwaukee south and east of the Cities, you'd have all that vast trackage, would you not?

A. Yes.

Q. Would that not be a business factor for you to take into consideration, and not mere speculation, but a business factor to be taken into consideration as to whether you would continue your present practice of routing cars to the Twin Cities and turning them over to connections, in the light of what you said before that you could under the new—and would under the new rates route the car to the Twin Cities, and then in all probability continue to deliver them to connections?

A. Yes, sir.

Q. Now, would you explain that? It just doesn't quite square in my mind. I'd like to have you explain that if you can.

Mr. Maguire: Now, if I might interrupt before the witness answers, I don't like to interrupt Mr. Musenbrock, but this question was very thoroughly threshed out between Mr. Hillman and the witness, and I submit that this [fol. 1663] is merely repetitive cross examination.

Exam. Dishman: Well, it might seem to be, but you want a clarification. You want an explanation of that answer. Do you have any views on the subject?

Mr. Musenbrock: Just one further element in there so that the record is perfectly clear as to my position: It is

not repetitive because in this question or situation you have the physical disability of the northern lines to reach into this Iowa territory, which would not be the case if the Milwaukee could get into the picture.

Mr. Maguire: If I might elaborate further upon my objection, Mr. Examiner, the witness has already said that, if the Milwaukee hauls into the transfer, or into, as far as that goes, any place to a junction point, that it would be his preference to let the traffic go east of the transfer in the future as it has in the past. Now, I think that should reassure Mr. Musenbrock.

Exam. Dishman: Is that your testimony now, Mr. Witness?

The Witness: Yes, sir.

Exam. Dishman: Do you adopt what Mr. Maguire says?

The Witness: Yes.

Exam. Dishman: All right, you make that statement your own.

Mr. Maguire: He said it before.

Exam. Dishman: Is that the way you would answer this question?

[fol. 1664] The Witness: I don't think that's the answer to his question.

By Mr. Musenbrock:

Q. You answer it. You're the witness, Mr. Duncan. You answer it. Don't accept Mr. Maguire's or mine.

A. Well, it's my belief that a new territory might be opened up to us if this Milwaukee application is granted, a new territory which would be west of Minnesota Transfer, and we do not now serve that territory very extensively because of the fact that we don't know whether the rates will apply off the SP&S, from some sources of supply on the SP&S. We don't solicit business in that territory now.

Now, if the Milwaukee is granted what they're seeking, perhaps we'll have business opened up in that territory.

Q. You spoke of 50 cars at least going into this territory in answer to Mr. Boe's question?

A. Well, it was my understanding that the territory was a line between Minnesota Transfer and Omaha and west of the Mississippi.

Q. Well, yes, west of the Mississippi, but that would be the Iowa territory of which I'm speaking. Now, what I'm after, and I'd like to get your views on it because you're presently compelled to interchange at the Twin Cities from the GN and the NP because they go no farther—

A. Yes.

Q. —you're compelled to transfer to another railroad, say, to Spencer, Iowa, or to Britt, Iowa, which is a com- [fol. 1665] mon point with M&StL and Milwaukee. Now, you can out of the Twin Cities presently—you understand the tariffs that that interchange is at Twin Cities or Minnesota Transfer to either the Milwaukee or M&StL. You understand that, do you not?

A. Yes, sir.

Q. Now, if the Milwaukee got the through rates from here to Britt, Iowa, with all of these privileges to you, to try the market, transit, test market, I'm just wondering whether, as a business proposition, you would continue to give the M&StL any business out of the transfer to Britt, Iowa, or whether you would use the single line haul from Spokane to Britt, Iowa, via Milwaukee Railroad.

A. I would very definitely give some of the business to the M&StL in the situation that you describe because we're very friendly with the M&StL traffic solicitor, and we like to give him business.

Mr. Musenbrock: Well, that should answer me and it does. Thank you.

By Mr. Hillman:

Q. Mr. Duncan, do you have any firm sales in the Chicago territory or east of Chicago on fir lumber originating on the Milwaukee?

A. Yes, sir.

Q. Which the Milwaukee then carries to Minnesota Transfer?

A. Yes, sir.

Q. Could you describe the routing practice as to that [fol. 1666] particular traffic moving through Minnesota Transfer via the Milwaukee—I'm giving you Minnesota Transfer via the Milwaukee—going to Chicago or through

Chicago? Is that traffic ordinarily taken by the Milwaukee from Minnesota Transfer down to Chicago, or is it ordinarily divided among other carriers?

A. I would say it was predominantly divided among the other carriers.

Q. Would you have any estimates in mind, not guesses that are too off, but do you have any fairly accurate idea as to what division of traffic there is coming out on Milwaukee going down to Chicago, compared with the other carriers?

Mr. Maguire: Before you answer that, Mr. Duncan.

Mr. Examiner, I've been pretty patient with this backing in and out of Counsel on cross examination. Mr. Duncan has given a very definite answer to Mr. Hillman's question. Now, he wants to beat a dead horse by asking this witness to give some percentages, when the witness has already said that a predominant share of that business will be divided among other railroads.

Now, I think that ought to satisfy Mr. Hillman, particularly in view of the fact that he is backing in on improper cross examination. He's been in and out of this record just like a fly over a honey jar, and I think it ought to stop.

Mr. Hillman: Mr. Examiner, first, I want to specifically point out that I specifically asked the witness not to make a rough guess, and, if he had any fairly accurate estimate, [fol. 1667] I would appreciate his giving it. If not, I didn't want it.

The second point is this, that all the questioning that has gone before has been on lumber originating on the Milwaukee, and I submit that's an entirely different area of examination.

Mr. Maguire: It's not any different. It's also an irrelevant examination.

Exam. Dishman: Your answer previously was it was a predominant amount?

The Witness: Yes, sir.

Exam. Dishman: Now, you want percentages, is that your question? You want a percentage?

Mr. Hillman: I believe I asked Mr. Duncan to give any fairly accurate estimate as to what the division of traffic

at Minnesota Transfer was, referring now to traffic that came in via Milwaukee.

Exam. Dishman: Well, if you can do it, go ahead.

The Witness: I can't give a percentage.

Mr. Hillman: That's fair enough. We'll let it go at that. Thank you, Mr. Duncan.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. We will recess until 9:30 tomorrow morning.

(Whereupon, at 5:05 p.m., a recess was taken until 9:30 a.m., Friday, February 18, 1955, at the same place.)

[fol. 1670]

Transcript of Proceedings—February 18, 1955

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Maguire: The next witness for cross examination is Mr. Dennis O. Selby, and his testimony on direct in this hearing herein commences on Page 537 of the transcript.

DENNIS O. SELBY having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Selby, I show you Page 31 of Exhibit No. 17 in this case, which was a request which I presented in the record at the November hearing in Chicago for preparation of data by you. Have you been shown a copy of that sheet by any representative of the Milwaukee?

A. Yes.

Q. Have you prepared data enumerated on that page?

Mr. Maguire: Just a moment, Mr. Selby. I think the record should also show that we declined to accede to that request at the Chicago hearing, and the Examiner ruled that we would not be required to request witnesses to furnish it. I think that's only fair to the witness. You may proceed now.

Mr. Rockwood: That's correct, Mr. Maguire.

By Mr. Rockwood:

Q. Have you prepared the data shown on that sheet?

A. No. Mr. Maguire said that it wasn't necessary, that it [fol. 1671] wouldn't be necessary. I think it would be impossible probably at this time for me to prepare such data. I couldn't possibly—well, I could possibly prepare partial data, but I wouldn't want to represent it as being complete.

As a matter of fact, I have information with me that would give partial information on this subject, but, as I say, I couldn't swear that it was complete.

Q. How many cars handled by your company in the year 1953, or any other year for which you have the data—

A. Well, I—

Q. Wait just a minute, please.

—moving westbound was stopped for partial unloading at one point west of the Montana-Dakota line and was to be unloaded at a point farther west? Have you that data?

A. I have certain bills of lading which I have pulled from my files. They're here. I don't have the exact number.

Q. Is that as complete as your records permit?

A. Without extensive research, yes. I went through our files of our principal suppliers and pulled out the bills of lading, copies of bills of lading, in that particular file. As I say, I can't guarantee that they're all there. Certain shipments aren't there, but most of them are there.

Q. Is that your supplier at Menominee, Michigan?

A. That's right.

Q. What's the name of that company again?

[fol. 1672] A. Heywood Wakefield Company.

Q. May I have the privilege of looking at those bills of lading?

A. Sure.

Mr. Maguire: No objection.

The Witness: These are copies, second copies, and in some cases the originals that we had for filing.

Mr. Rockwood: Mr. Examiner, could I ask Mr. Maguire if Mr. Selby could conveniently be available after we've had a short time to look at these? I don't want to stop the hearing to go down through every one of them right now, but I would like to look them over.

Mr. Maguire: When do you mean, Mr. Rockwood? Today?

Mr. Rockwood: Yes. If there is an opportunity today, I certainly will.

Exam. Dishman: You mean after lunch? Did you want the lunch period?

Mr. Rockwood: I think that that would be sufficient time to check them over. I don't know how many there are here.

Mr. Maguire: I don't think Mr. Examiner, that it would be fair to Mr. Selby to ask him to stay over the weekend, for example. He's located in Seattle and he's a busy man, and, if Counsel wants a recess or wants to take during the lunch period to look at them so Mr. Selby can be released today, I have no objection to that.

Mr. Rockwood: Let's leave it that way. I'd like to find [fol. 1673] out how many there are. Just thumbing through—

Mr. Maguire: I think in fairness it should be stated that I've examined that bunch of papers there, and they're not all of them for one calendar year.

Exam. Dishman: Is it your desire, Mr. Rockwood, that the witness be excused then temporarily, to be recalled later today?

Mr. Rockwood: I think, yes, I'd like that. Let me see what I can do with them between now and 2 o'clock.

Exam. Dishman: Is that agreeable?

Mr. Maguire: Yes, that's agreeable. I was going to say that, rather than have Mr. Selby come back on Monday, that I'll be willing to take those and list them into the record, rather than to have them—have him called back. It's no great effort to do that and it will not take too much time, but, if Mr. Rockwood wants to look at them first in the meantime, I have no objection.

Mr. Rockwood: How many of them are there here, Mr. Selby, in this packet? How many cars?

The Witness: I can't tell you. I think there are probably 40—30, 40 or 50—less than 50, I would say.

By Mr. Rockwood:

Q. Less than 50, and what calendar period do these cover?

A. '53 and '54.

Q. So, there's two years; if they work out by the law of averages, there would be about 20 a year?

[fol. 1674] A. Well, we have more cars than that, but that is all that—as I say, that is all the bills of lading that were readily available now in the file.

Mr. Maguire: I think it should be borne in mind that that is a partial list. Mr. Selby explained that those are not complete. Those are the papers that he was able to find, but it's not a complete list of the cars that were so stopped.

By Mr. Rockwood:

Q. Is Menominee, Michigan, on the Milwaukee?

A. Yes.

Q. All of these cars in this list originated on the Milwaukee?

A. With possibly one or two exceptions, the majority of them originated on the Milwaukee.

Mr. Rockwood: Well, I would like to defer any further cross examination of Mr. Selby until I have had a chance to look at them.

Mr. Maguire: May I just ask one question to button up one thing that Mr. Rockwood opened up?

Exam. Dishman: Yes.

Redirect examination.

By Mr. Maguire:

Q. Is Menominee also located on another railroad? Do you know, Mr. Selby, is there another railroad that serves Menominee?

A. Are you asking me?
Q. Yes, I'm asking you.
A. Yes.
[fol. 1675] Q. Which railroad is that?
A. I believe it's the North Western.
Q. The Chicago and North Western?
A. Yes.

Mr. Maguire: I'll defer further redirect.
Mr. Hillman: Mr. Examiner, could I make one point clear?
Exam. Dishman: Yes, Mr. Hillman.

Recross examination.

By Mr. Hillman:

Q. Mr. Selby, these are all bills of lading which you had convenient access to? There's been no selection made of these from others?
A. That's all of the bills of lading that were in my Heywood Wakefield Company folder attached to the manufacturer's invoices—manufacturer's or supplier's invoices for those two years of '53 and '54. I just went through the file and took out the bills of lading that were there. I'm not sure how many were missing, or anything like that.

Mr. Maguire: I think we should clarify that if I may interrupt just a moment, Mr. Hillman.
When you say all of the bills of lading, do you mean all of the bills of lading . . . period? Or, do you mean all of the bills of lading involving shipments which were stopped for partial unloading in that particular period?

The Witness: All the bills of lading.
Mr. Maguire: Those that you gave Mr. Rockwood just now?
[fol. 1676] The Witness: Those that I gave Mr. Rockwood, I believe, pertain to partial shipments—shipments that were stopped for partial unloading.
Mr. Maguire: Yes. I just wanted to get that clear.

Mr. Boe: Now, I have a question of this witness if the Examiner please.

Exam. Dishman: Yes, Mr. Boe.

By Mr. Boe:

Q. In your direct examination, perhaps you recall that you referred to shipments from a point in Texas—Waco, Texas? Do you recall that?

A. Yes.

Q. These bills of lading that you handed Mr. Rockwood, do they cover any shipments to or from points in Texas?

A. No. These bills of lading pertain to shipments only from Menominee, Michigan.

Q. Well, do you have any bills of lading available with respect to Waco, Texas?

A. No.

Q. But you recall you did testify that you handled shipments from Waco, Texas?

A. All of the Waco shipments last year have been made by truck.

Q. None by rail?

A. No.

Q. Are we to assume that none of the shipments in the last year to or from Texas moved by rail?

[fol. 1677] A. That is correct.

Mr. Maguire: Wait a minute. You say to or from Texas?

Mr. Boe: From Texas.

Mr. Hillman: I want to ask Mr. Selby—pardon me, are you done?

Mr. Boe: No, I'm not.

By Mr. Boe:

Q. Did you answer that question?

A. There was none by rail. I don't remember my exact reply.

Q. From Texas?

A. There were no shipments by rail from Texas last year.

Q. Now, let me ask you: To Texas, did you ship any shipments to Texas?

A. No.

Q. You have not during the past two years?
A. No.
Q. By rail or truck?
A. No.

Mr. Boe: That's all.

By Mr. Hillman:

Q. Mr. Selby, one more point for clarification: I believe you testified that all but one or two of these shipments—and I'm trying to clear up what you were referring to—originated on the Milwaukee at Menominee.

Are you referring to shipments covered by these particular bills of lading that you handed to Mr. Rockwood, or are you referring to shipments from that point generally? [fol. 1678] A. I don't remember my statement, but all of these bills of lading, if my memory is correct, originated at Menominee.

Q. And then my question was as to what carrier?

A. It could be one or two of them went out of there on the Chicago and North Western. I think that was my statement, that there could have been one or two shipments by the Chicago and North Western that are included in those bills of lading, but the others went on the Milwaukee.

Q. But you're referring, when you mention one or two shipments by the North Western, to only these bills of lading that you've given to Mr. Rockwood, not as to any other shipments which might have gone not for partial unloading?

A. The statement I made referred to these bills of lading.

Mr. Hillman: That's all.
Exam. Dishman: Is that all?
Mr. Maguire: That's all.
Exam. Dishman: You're excused temporarily.

(Witness excused temporarily.)

Mr. Rockwood: I'd like to say, Mr. Examiner, I've handed this file of bills of lading over to one of my associates and asked him to make a tabulation. If he brings it back in time, we may be able to finish with Mr. Selby this morning.

Mr. Maguire: I will ask Mr. Selby to remain until that tabulation is made.

I will now call Mr. J. M. Hutchins, whose testimony in the [fol. 1679] June hearing will appear on Page 402.

J. M. Hutchins having been previously sworn, was recalled for further cross examination, and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Hutchins, I show you Pages 13 and 14 of compilation which is in this record as Exhibit 17. Have you seen copies of those sheets of Exhibit 17 that was offered in Chicago in November, 1954?

A. This is the first time I ever saw them.

Q. Was any request or suggestion or discussion had between you and a representative of the Milwaukee relating to data of the character shown on these two pages, 13 and 14?

A. No.

Q. Will you take the time now to read down through and familiarize yourself with the character of the information which is referred to there?

A. Yes.

Q. Do the records of your company presently in existence —are they in such shape that you could, if you took the time, prepare the data summarized in those two pages?

A. I doubt it very much.

Q. You are in business as a wholesaler, as I remember?

A. Right.

Q. And you sell both firm and transit cars?

[fol. 1680] A. Yes.

Q. On a transit car, you, as wholesaler, would have the information as to the ultimate destination of that car after diversion, if any, would you not?

A. Certainly.

Q. And you're not in a shape that some of these lumber manufacturers are, who sell through wholesalers, who may

not have the information as to the ultimate disposition of the car after diversion, so that your records are in existence from which these data could be compiled, is that true?

A. Yes. In each individual file, that information could be dug out for you.

Q. From the files of Fleishman Lumber Company?

A. However, I'm no longer connected with Fleishman Lumber Company. So, I can't answer if it could or not.

Q. I see. When did you leave Fleishman Lumber Company?

A. August the 1st.

Q. In what business do you engage now?

A. Wholesale lumber.

Q. What company?

A. Johnson Wholesale Company.

Q. Are you a partner in that business, or the owner of the business?

A. No.

Q. You're in the employ of that company?

[fol. 1681] A. Yes.

Q. And what is the nature of your duties with Johnson Lumber Company?

A. Just the same as they were before—buying and selling lumber.

Q. Where is their office?

A. In the Terminal Sales Building at Portland.

Q. I take it, since you're no longer with Fleishman Lumber Company, you wouldn't be authorized to disclose detailed information as to the nature of their business, even though Fleishman Lumber Company had the data and were able to give it?

A. That's correct.

Mr. Rockwood: That's all I have.

Redirect examination.

By Mr. Maguire:

Q. And, Mr. Hutchins, being in the wholesale lumber business, if the data were at hand and you were still with the Fleishman Lumber Company, would you be willing

to make public the details of your dealings on shipments in the manner requested?

Mr. Rockwood: Just a minute. He can no longer speak for Fleishman Lumber Company, what they are willing today to do.

Mr. Maguire: I'm talking about him. I said if he were still with the Fleishman Lumber Company and as a wholesaler. I think I'm entitled to an answer.

Mr. Rockwood: He doesn't know what Fleishman Lumber [fol. 1682] Company would be willing to do today.

Exam. Dishman: What would they have been willing to do when you were there?

Mr. Rockwood: I think that's immaterial.

The Witness: I don't think—

Mr. Rockwood: Just a minute. This request was not made when he was with Fleishman, and the question wasn't raised as to what Fleishman Lumber Company would be willing to do.

Mr. Maguire: I wish to change the question a little, Mr. Examiner.

Exam. Dishman: All right.

By Mr. Maguire:

Q. Would any lumber wholesaler be willing to furnish the data requested?

Mr. Rockwood: Just a minute. As a matter of fact, some of these wholesalers are willing to furnish it, and I know them personally.

Exam. Dishman: Are you in a position to answer the question?

The Witness: Yes, sir.

Exam. Dishman: Of your own knowledge?

The Witness: Yes.

Exam. Dishman: What is the answer?

The Witness: The answer would be: No.

Mr. Rockwood: Objected to—just a minute. Mr. Examiner, I object to that statement by this witness as to what every lumber wholesaler in the Pacific Northwest [fol. 1683] would or would not be willing to do. This witness is not qualified to answer.

Exam. Dishman: Well, he says he is. You could certainly test him as to his qualifications.

Mr. Rockwood: May I examine his qualifications as to that question?

Mr. Maguire: Just a minute. Could we have the answer and then let him be heckled by Counsel?

Exam. Dishman: Go ahead and ask him the question.

Recross examination.

By Mr. Rockwood:

Q. Do you, Mr. Hutchins, purport to be informed and know what every lumber wholesaler in the Pacific Northwest is or is not willing to do?

A. On this particular question, I would say that none of them would do it.

Mr. Rockwood: I move that that be stricken.

By Mr. Rockwood:

Q. Will you please answer the question?

A. I just did.

Mr. Rockwood: Repeat the question.

(Question read.)

The Witness: Well, of course, I don't.

Mr. Rockwood: I repeat my objection. This witness is not qualified to answer the question.

Mr. Maguire: All right. Then I'll reframe the question.

Redirect examination.

By Mr. Maguire:

Q. Are you in position from your general knowledge of [fol. 1684] the customs of the wholesaling industry, industry of wholesaling lumber, to know what would be the attitude of the average, if not the majority, of the wholesalers on furnishing this data?

Mr. Rockwood: I don't think—I think it's entirely improper, but I don't think the outcome of this case is going to hinge on the answer, and I will not make an objection.

Mr. Maguire: All right, let it go.

The Witness: Well, I've been in the business for 20 years, and I doubt very much that any wholesaler in the Pacific Northwest will divulge that kind of information to anybody.

Mr. Maguire: That's all.

Mr. Rockwood: All right, may I examine a little further?

Exam. Dishman: Go ahead.

Recross examination.

By Mr. Rockwood:

Q. At the time you testified in June, 1954, what authority did you have from the Fleishman Lumber Company to speak for that company?

A. Just as Manager—their Sales Manager, that's all.

Q. Were you authorized by your superiors to appear and take a position in the case?

A. We discussed it, and there was no order—there was no particular order given me to do it or not to do it. It was strictly up to me.

Mr. Maguire: Was it discussed with them?

[fol. 1685] The Witness: I discussed it with them, yes.

Mr. Maguire: Was there any objection to your appearing?

The Witness: None.

Mr. Rockwood: I have nothing further.

Mr. Maguire: That's all I have.

Exam. Dishman: Any further questions?

Mr. James: No questions.

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Maguire: I'll call Mr. Wicker, Mr. George Wicker. His testimony commences on Page 389 of the transcript.

GEORGE R. WICKER having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Wicker, you testified in this case previously on June 28th, 1954. Do you recall that, do you?

A. Yes, sir.

Q. At that time, as shown at Page 390 of the record, your address was given as 2035 Southwest 28th Avenue, Portland, Oregon. Is that the correct address?

A. No, sir. It's 2035 Southwest 58th Avenue.

Q. Is that within the city limits of Portland?

A. I believe it's just outside the city limits.

Q. As a matter of fact, it's out in the Sylvan district out- [fol. 1686] side the city limits?

A. That's correct.

Q. Just below the hill from Mount Calvary Cemetery?

A. That's right.

Q. Is that your residence?

A. No, it is not. It's my office.

Q. Do you have a listed telephone at any address other than at Southwest 58th Avenue?

A. No, I do not.

Q. Where is your residence?

A. King Towers.

Q. By whom were you employed in the year of 1953?

Mr. Maguire: Just a moment. That is objected to, Mr. Examiner, on the ground that it is improper cross examination.

Exam. Dishman: I didn't get the question, Mr. Rockwood.

Mr. Rockwood: I asked him by whom he was employed in 1953.

Mr. Maguire: His testimony entirely dealt, Mr. Examiner, with his own business, which he was running at the time.

Exam. Dishman: What is the purpose?

Mr. Rockwood: I will endeavor to show on cross examination that his testimony did not relate to his own business, that it related to somebody else's business.

Exam. Dishman: I see no objection. Do you mind stating who your employer was in 1953?

The Witness: Well, I'd be strictly guessing on the—I [fol. 1687] don't know the exact date—I would assume it would be the Buckeye Wholesale Lumber Company.

By Mr. Rockwood:

Q. When did your employment with that company stop?

A. I couldn't give you the exact date on that.

Q. Who was your employer immediately before you began doing business in your own name as you were doing it on June 28th, 1954?

A. The Coastal Forest Products Company, in which company I was a partner.

Q. And when did your connection with that company cease?

A. I believe it was about February, 1954.

Q. This being a year later than February, '54, you are unable to state more closely than that as to when you started in business in your own name and ceased to be connected with the Coastal Company?

A. There is some question exactly when that connection ended. I'm still working some matters out with Coastal Forest Products Company today.

Q. But not as a part owner of the business, are you?

A. Well, I have a responsibility as part owner of the business.

Q. Did you have authority when you testified on June 28th, 1954, to discuss the business of Coastal Lumber Company?

Mr. Maguire: Just a moment. Mr. Examiner, there is no foundation for a question of that kind because it has not [fol. 1688] been shown that he was discussing the business of Coastal Forest Products Company, no testimony whatever. This was in June, 1954, which was four months after his termination of his partnership in the Coastal Forest

Products Company. So, there's no foundation for that statement.

Mr. Rockwood: Just a minute, Mr. Examiner. On Page 401 of the transcript—

Mr. Maguire: Just a moment.

Exam. Dishman: Just a moment. All right, proceed, Mr. Rockwood.

By Mr. Rockwood:

Q. On Page 401 of the transcript appears this in cross examination:

"How many carloads a year do you sell?"

Answer: "I would say an average of about 150 cars per month."

Question: "Where is the major market for that that you sell?"

Answer: "Well, it varies. It varies. At times the market is in the middle west where it is excellent. At other times the bidding drops off and we . . ."—I call your attention to the plural pronoun "we"—". . . find ourselves suddenly turning to marketing in the southeast. We have no fixed market. It's all over the country as the building progresses."

At the time you testified on June 28th, 1954, were you in your own name doing the business of 150 cars per month?

A. Very close to it.

Q. In that statement, you were describing the general [fol. 1689] market conditions. Were you describing them in connection with your own business of George R. Wicker Company, or were you describing the Coastal business?

A. I was referring to my own business and the business I had done with Coastal.

Q. So that your testimony to some extent at least was based on the experience of a company with whom you had formerly been connected, but with whom you were not connected as a partner at the time you testified, is that correct?

A. That is correct.

Q. How many cars did you handle in your own name in the month of June, 1954, up to the time you testified?

A. That's difficult to say.

Q. Can you give us an approximate figure?

A. Well, if I can qualify the answer. The Coastal Forest Products connection—some of the customers went with me, and some of them went with Coastal Forest Products Company. I would estimate that in my own right I did about 90 carloads, averaged about three or four cars per day.

Q. And then the figure of 150 cars per month was based on the experience of Coastal Company, as well as your own?

A. No, no. It's based on my own experience as well.

Q. Based on what you hoped to obtain in your own name, and not based as you—let me repeat the question.

In any month after you ceased to be with Coastal—.

[fol. 1690] Mr. Maguire: Now, just a moment. I object to that question, Your Honor, because the Counsel is attempting to take an unfair advantage of this witness. He asked this witness what his shipments were during the month of June of that year. Then he relates that back to the entire time that Mr. Wicker had been operating.

I think that the witness should be fully informed as to the trap the Counsel is trying to walk him into.

Exam. Dishman: What is the purpose of the question?

Mr. Maguire: I can't see the purpose of it.

Mr. Rockwood: I understand that this gentleman testified in June and based his testimony on his experience with a company with which he was no longer connected at the time he testified, and I wonder—

Exam. Dishman: Is that right, Mr. Witness? You're the one that should say that. Did you do that?

The Witness: Yes, I did.

Exam. Dishman: You based your testimony on a company you were no longer with, is that it?

The Witness: Yes, I did. I was asked what company I was with at the time of the testimony. I disclosed the company I was with. At no time was I asked or required to make reference to any previous connection. As the Manager and partner of the Coastal Forest Products Company, I was doing business in my own right, as much as I was doing business in my own name.

[fol. 1691] Exam. Dishman: And you did not testify concerning the operations of the firm you were no longer with, is that it?

The Witness: I testified regarding the operations of the concern I was no longer with and regarding my own operations as well.

Exam. Dishman: Well, does that answer the question?

Mr. Rockwood: I think that does answer the question.

By Mr. Rockwood:

Q. Mr. Wicker, at Page 393 of the transcript, you stated that you had written a letter to the Public Utilities Commissioner of Oregon "about 30 days or 45 days ago", and I read further ". . . complaining about the restrictions where I could not start a car at, say, Sweet Home, Oregon, and proceed to ship it through to St. Maries, Idaho, to complete loading and serve a great deal of the eastern territory, where it actually restricted our operation, and in this particular instance, I cited the car number and date of shipment and so forth and the gentleman from the Public Utilities Commission came out to see me, and frankly . . .", and then there's an interruption.

The Examiner asked, "The Public Service Commission of Oregon?", and then you say, "Yes", and it proceeds further. The record will speak for itself.

Do you have with you a copy of that letter you wrote the Oregon Public Utilities Commissioner?

A. I do not.

Q. Isn't it a fact that that complaint about the absence [fol. 1692] of rates was regarding the Santiam Branch, and it said nothing about St. Maries, Idaho?

A. I don't recall the text of the letter.

Q. Did the letter say anything about St. Maries, Idaho?

A. I believe it did, yes.

Mr. Rockwood: May we have that letter produced?

Mr. Maguire: No. We refuse to produce it unless the Examiner orders it. It's entirely irrelevant to the inquiry.

Exam. Dishman: Well, the Examiner won't order the production of any evidence unless Counsel agree.

By Mr. Rockwood:

Q. Are you willing to produce that letter, Mr. Wicker?

A. I don't know that I can produce that. However, it

was a letter written to the Public Utilities Commissioner. It's a matter of public record?

Q. You're a member of the bar, are you, a lawyer?

A. I'm merely asking you a question, sir.

Q. Oh, I thought that was a statement, whether or not it was a matter of record in the PUC file.

Mr. Rockwood: I don't know whether it is or not, but I know of no rule, Mr. Examiner, which would prevent him, as the author of the letter, from producing a copy of it.

By Mr. Rockwood:

Q. Are you willing to produce a copy of it?

A. If I can locate the letter, I'd be glad to.

Mr. Rockwood: I would like to have it produced, Mr. Examiner.

[fol. 1693] Exam. Dishman: Well, I think that Counsel will—

Mr. Maguire: I object to that on the ground that it is improper cross examination, in the first place, and also it is entirely irrelevant.

The question, which is involved here, is what the needs of the industry, as reflected in Mr. Wicker's operation, are, and what he may have—the details of the complaint that he made, whether he mentioned St. Maries, Idaho, or not, in a letter to the Public Service Commission complaining about the restrictions off the Sweet Home line, is entirely irrelevant to this inquiry.

Exam. Dishman: Well, the Examiner is not going to allow into the record any evidence that the parties are not willing to agree to.

Mr. Maguire: May it be understood that, if Mr. Wicker is willing to do it, I am not refusing on that ground, but I'm objecting to the letter on the ground that it is improper cross examination, and, furthermore, it is irrelevant and immaterial to the issues.

Mr. Rockwood: I point out, Mr. Examiner, that Mr. Maguire did not consider the evidence irrelevant when Mr. Wicker testified as I have referred to on direct examination on June 28th, 1954.

Mr. Maguire: Now, let me read this. Let's start over on Page 392. The witness says, "Well, one of the gentlemen from the Milwaukee Road came in . . ."—you were inquir-
[fol. 1694] ing as to whether or not we had been trying to procure witnesses, and Mr. Wicker said, "Well, one of the gentlemen from the Milwaukee Road came in and asked me if I would be interested in appearing at this hearing and I told him at the time that it was an opportunity to get something off my chest that had been there a long time, as it had been. I felt that certain restrictions in the tariff prevented free trade and a full line of rates."

Then he was asked to go ahead with his statement and then Examiner Dishman said—there was a little—one of the usual colloquies between you and me, and the Examiner Dishman said, "You did state your wanted to get something off your chest?", and the witness, "That is right." Examiner Dishman, "Could you do that first before going into this?" I said, "I will withdraw the question for the time being . . ." Examiner Dishman, "All right", and then Witness Wicker proceeded with his statement.

Mr. Rockwood: At that time, you did not object to the efforts of the Examiner to elicit that material on the ground that it was not relevant.

Exam. Dishman: Well, proceed.

Mr. Maguire: Well, that was entirely—his writing to the Public Service Commissioner was an entirely collateral matter. The question involved here was what his experience was with the restriction on rates.

Now, if Mr. Wicker is willing to furnish a copy of the
[fol. 1695] letter, I, of course, am not going to say, "No, we will not furnish it", but I'm going to object on the ground of irrelevancy, and that objection still stands.

Mr. Rockwood: I would like to have a copy of that letter, Mr. Examiner.

Exam. Dishman: Well, the Examiner will not direct the witness to furnish it.

Mr. Maguire: If Mr. Wicker is willing to furnish it, he can show it to Mr. Rockwood, but I'm going to object to it being introduced.

By Mr. Rockwood:

Q. Will you do so, Mr. Wicker?

A. The Coastal Forest Products Company has been officially closed, and the files have been removed to Seattle, to the home office of the Seneca Lumber Company. Now, as to whether or not I can obtain—whether I have the ability to obtain a copy of that letter today, I don't know. If I can obtain it, I'd be glad to do so.

Q. Well, I point out that on Page 393, if I read the record correctly, this all happened and the letter was written "30 to 45 days ago", that is, prior to June 28th. That would be beyond the time you severed your connection with Coastal Lumber Company.

Mr. Maguire: Mr. Examiner, I just want to make a comment there on Mr. Rockwood's remark. That also is unfair because Mr. Wicker has already testified today that, while [fol. 1696] he severed his connection as a partner of the Coastal Forest Products Company, that he still had a continuing connection with them, in a manner, I presume, although it wasn't brought out, of liquidation or something of the sort. It appears then that he was not disconnected from them.

Exam. Dishman: Well; we have the witness here who would be the best source of this information here. Is that what you testified? Do you still have a connection?

The Witness: I have. I have had a connection since that time.

Exam. Dishman: Do you have it now

The Witness: Even now, as to responsibility and to the closing up of the Coastal Forest Products' business in a satisfactory manner that will not reflect on my future connections in the industry.

Exam. Dishman: We've had enough about this letter on the record at this time. If the witness can find that letter and wants to, he can show it to Mr. Rockwood, and then we'll pass on the question of whether or not it will come into the record.

So, you can proceed, Mr. Rockwood.

The Witness: Mr. Examiner and Mr. Rockwood, just for my own edification, I'd like to know if that letter is not

a matter of public record. If it is, it can be very easily obtained without my going to the expense of a trip to Seattle to obtain it.

Mr. Rockwood: Unfortunately, I don't have the answer [fol. 1697] to a question like that, Mr. Wicker, whether or not we could find it in the Public Utilities Commissioner's file, or whether he would show it to us, I'm not prepared to state as a lawyer at the present time.

The Witness: I just thought it might be helpful.

Mr. Rockwood: I can only say to the extent that I don't know.

Exam. Dishman: All right, let's proceed.

By Mr. Rockwood:

Q. At Page 394 of the record—

Mr. Maguire: Well, now, I don't want to lead this question to death, but it isn't the thing—

Exam. Dishman: There's a lot of it in the record already.

Mr. Maguire: If Mr. Wicker has to go to Seattle to dig through the files of the Coastal Forest Products Company, I would say it's entirely up to him as to whether he wishes to incur this expense on a somewhat dubious errand.

Exam. Dishman: Well, that's the understanding here, that it's entirely up to the witness whether he wants to do it or not. If he does and he presents the letter, then we'll rule on whether it's admissible or not.

Mr. Maguire: The witness is under no obligation to do it, as I understand?

Exam. Dishman: Oh, no. I'm not directing the witness to do it. It's up to him entirely.

By Mr. Rockwood:

Q. Might I ask: Was this written on the letterhead or [fol. 1698] in the name of Coastal Products Company, or was it in your own name?

A. It would have been on the letterhead of the Coastal Forest Products Company with my signature.

Q. And you maintain a sufficient connection with Coastal so that you are authorized to make complaints to the Public

Utilities Commissioner—you were about the middle of May or the beginning of June of 1954?

A. I was the General Manager.

Q. You were the General Manager still of Coastal as late as the first of June of '54?

A. At the time of the writing of that letter, the date of that writing, I was the General Manager of Coastal.

Q. Was that letter written on the solicitation of the Milwaukee Railroad?

A. The letter was not written on the solicitation of the Milwaukee Railroad. I received counsel from one of the railroads in regards to that letter.

Q. Which of the railroads?

A. I do not recall which railroad. It may have been the Milwaukee because the Milwaukee was concerned with the matter.

Q. I'd like to have the letter, Mr. Wicker, if you could furnish it.

Exam. Dishman: That request has been made. The record is filled with it. So, let's proceed.

[fol. 1699] By Mr. Rockwood:

Q. I read from Page 394 of the transcript—this is your direct testimony.

"I am purely selfish in this, and that is, I can see absolutely no reason why we should have a little tag-end railroad in the middle of Oregon, serving the heart of Oregon or the heart of the fir lumber industry where we have restricted rates into certain territories."

Were you referring in that statement to the Santiam Branch of the Oregon Electric?

A. I was.

Q. And that's the only portion of the SP&S to which you were referring in that statement?

A. I would say so, yes.

Q. Is the area served by the Oregon Electric the heart of the fir industry in Oregon?

A. So far as my business is concerned, yes.

Mr. Maguire: Just a moment, Mr. Wicker. This is repetitive cross examination. Mr. Rockwood had the opportunity to ask these questions at the time the witness was on the stand as to purely local conditions in the state of Oregon, and, so far as this alleged change of issues, which we do not admit, the geographical location of the Santiam Branch or the characteristics of the Santiam Branch were entirely before the Commission, and this is improper cross examination at this time.

Exam. Dishman: What do you say to that, Mr. Rockwood?

[fol. 1700] Mr. Rockwood: I don't understand that the Commission made a ruling that we weren't permitted to cross examine further in the light of the issues as they were changed by the amended complaint, or that we were in any way limited. We could cross examine on any subject which was relevant to the issues as raised by the amended complaint.

Mr. Maguire: In the first place, the Commission did not rule that the issues were changed, and, in the second place, the Examiner cautioned Counsel at the beginning of this hearing that there was to be no repetitive cross examination, and I'm basing my objection upon the fact that, regardless of whether the issues are changed or not, these are matters which could and should have been covered by Mr. Rockwood at the Portland hearing in June.

Mr. Rockwood: That was not repetitive.

Exam. Dishman: It's not repetitive. He just didn't do it. There's nothing in the record about it.

Mr. Maguire: Yes, but it's improper cross examination.

Exam. Dishman: I'll let the witness answer.

By Mr. Rockwood:

Q. Is the area served by the Santiam Branch of the Oregon Electric the heart—to use your own words—of the fir lumber industry in the state of Oregon?

A. I believe that you have—if you will put your finger on a point on a map indicating the very center of the amount of fir lumber produced, that should be very close to that locale, yes.

[fol. 1701] Q. Isn't 60 per cent of the fir lumber in Oregon south of Oregon?

A. You probably have much better access to the records than I.

Q. Do you know whether that is or is not a fact?

A. I do not know.

Q. In your business, as you now conduct it, you say that the value of the commodity of a car may run as high as $25,000, is that correct?

A. I shipped a $20,000 car last week.

Q. Taking that as an example, and simply to find out how you do business, do you sell that—do you buy that from the manufacturer and pay for it before it leaves the mill, pay for it about the time it leaves the mill, or do you handle the order and is payment for the car made by the customer to the mill?

A. I handle the orders in both ways.

Q. On these cars that run $25,000, do you buy the car and then ship it?

A. On cars that run that much, I do not buy them.

Q. You are now engaged in the business of furnishing a general line of fir lumber?

A. I don't transit any.

Q. All of your business is firm?

A. All of my business is firm.

Q. I see. On any car handled by you, who places the order for the car? Do you or does the mill loading?

[fol. 1702] A. The mill loading places the order for the car.

Q. Do you ever—well, in the year 1954, did you place a single order with the SP&S or the Oregon Electric for a car for loading? Did you place the order?

A. Yes.

Q. For loading at what point?

A. For loading at Bridal Veil, Oregon.

Q. That's on the Union Pacific?

A. That's correct.

Q. I asked on the SP&S.

A. No, I didn't.

Q. How many cars have you handled, by you as a wholesaler, since June 30, 1954, that is, in the last half of the year of '54?

A. I would say about 40 cars would be wholesale.

Q. And that is the extent of the business that you handled in the last half of the year of '54?

A. No.

Q. What was the other business?

A. The other business was all shipped on a mill agency basis, selling for the mill.

Q. How many cars were included in that category in the last half of '54?

A. In closing my business for 1954, we had just in excess of 525 cars.

[fol. 1703] Q. I show you, Mr. Wicker, copies of Pages 12, 13—copy of Page 12—excuse me, let me start again, please—a copy of Page 12 of what is included in this record as Exhibit 17, as I remember. Have you ever seen a copy of that sheet?

A. No, I haven't.

Q. Was the subject matter covered by that sheet ever discussed by you with any representative of the Milwaukee?

A. The subject matter of that sheet has been discussed with me by every railroad that has a solicitor.

Q. Well, I mean particularly the character of the data referred to in that Paragraph 4. Was any request made of you to prepare data of that nature, or was any inquiry made of you as to the possibility of compiling data of that nature?

A. No, there hasn't been.

Q. By any representative of the Milwaukee?

A. No.

Q. Are your records at the present time in such shape that the material—remember, this goes only when you were doing business in your own name up to June 30, 1954—are the records in existence from which the data enumerated on that page could be prepared?

A. It could be, but I certainly wouldn't give that information to anyone.

Mr. Rockwood: That's all I have.

Mr. Torinus: I have just one or two questions of Mr. Wicker.

[fol. 1704] By Mr. Torinus:

Q. That 525 cars that you mentioned, as I recall, other than 40 cars that you handled as a wholesaler, were they handled since June, since the end of June, 1954, or were they for the entire year of 1954?

A. They were handled since the beginning of June, 1954.

Q. Since the beginning of June, 1954?

A. That's right, the six months period.

Q. And were they handled by you as George R. Wicker, or were they—or do they reflect in any way the business of your former partnership?

A. They were handled entirely by me and did not reflect the business of my former associate.

Mr. Torinus: I have no further questions.

Mr. James: No questions.

Mr. Boe: I have a question, Mr. Examiner.

Exam. Dishman: All right, Mr. Boe.

By Mr. Boe:

Q. Mr. Wicker, do you recall, when you appeared here at the hearing in June, 1954, you stated, among other things, that your difficulties had been—I'm referring to Page 394 of the transcript:

"My difficulties have been . . ."—referring to and using your language—"My difficulties have been largely in getting east of Mobridge, getting a full line of rates east of Mobridge, full line of rates off the Oregon Electric and the SP&S."

Now, I've been poring over your testimony, following [fol. 1705] that statement of yours, and I'm concerned particularly with a more particular description of the territory that you had in mind when you used that term "east of Mobridge." Would you mind stating now what territory you had in mind when you made that statement?

A. I was referring to the area of Wisconsin, Iowa, Minnesota and the Dakotas.

Q. Now, with respect to Iowa, at the time you testified, you didn't particularize as to what point or points in Iowa

you were having difficulty in reaching. Can you name any points in Iowa where you had difficulty or have difficulty, in connection with the rate adjustment that you had before you at that time, in reaching?

A. I couldn't name them offhand. I'd have to refer to—I'd have to refer to the business that we've had, and there are some areas that we have not been able to serve due to the fact that we did not have rates into that area.

Q. Is it a correct statement that you now have no particular areas in mind in Iowa? You can't recall that at that time you had any particular areas in Iowa that you were unable to reach because of the rate adjustment that existed at that time?

Mr. Maguire: Just a moment before you answer that, Mr. Wicker.

I think that Counsel has answered Mr. Boe's question, and Mr. Boe is trying to summarize the witness' previous [fol. 1705a] testimony and trying to put words in the witness' mouth. I believe the witness' previous answer should be sufficient.

Mr. Boe: Well, now, I object to that, if your Honor please. I wasn't here last June.

Mr. Maguire: I'm objecting to what you're saying.

Exam. Dishman: What do you say, Mr. Boe?

Mr. Boe: I'm opposing Counsel's suggestion that I should be limited to what happened last June or before.

Mr. Maguire: I'm talking about your previous examination right here, the question that's before us.

Mr. Boe: I haven't asked this witness a question yet.

Exam. Dishman: Do you understand the question?

The Witness: No, I'm sorry, I don't.

Exam. Dishman: Would you read it back?

(Question read.)

The Witness: I think the witness, Mr. Examiner—it's only fair to the witness, he not being skilled in the ways of the court room, that he is not obliged to swallow any answer suggested, and that he may say that his former answers will answer this question.

Exam. Dishman: Well, we have an intelligent witness on the stand. You go ahead and explain it.

The Witness: Well, if I might qualify the question, Mr. Examiner, or the answer, I have somebody that handles the routing on all of these cars in my office. I do not personally [fol. 1706] handle all of the transactions that go through my office.

The only time that they come to my attention is when someone comes in and puts an order down on my desk and says, "You can't place this order at so-and-so at Lebanon because the rates won't work." Then it comes to my attention, and it was exactly one of these situations that I wrote to the Public Service Commission about.

I would not have—without referring back to my records, I would not be able to intelligently answer that question as there are hundreds of cars shipped, and it would be impossible for me to remember the exact location and the exact orders or nature of these cars without—to give you an accurate answer.

Mr. Rockwood: Maybe Mr. Boe doesn't remember the geography. Lebanon is on the Santiam Branch of the Oregon Electric. That's correct, isn't it?

The Witness: That's correct.

Mr. Boe: Well, I'm interested particularly in the witness' testimony as to the points east of Mobridge that he referred to in his testimony last June, and I was concerned primarily with the destination end of it.

By Mr. Boe:

Q. You referred particularly to Merrill, Wisconsin, and to Wausau, Wisconsin, just to refresh your recollection on Page 397.

A. Yes, I had great difficulty with the rates there.

Q. Now, I'm interested with respect to your testimony [fol. 1707] regarding Iowa, and I was trying to find out if you could recall now what, if anything, you had to complain about as to the rate adjustment with respect to the state of Iowa, and, as I understand, you now say you don't—you're not able without referring to some of your records as to what points in the state of Iowa you had in mind, is that right?

A. I can answer you by telling you that the Milwaukee points served in Iowa.

Q. All Milwaukee points served in Iowa?

A. Not all Milwaukee points, because I don't sell at all Milwaukee points, but a number of Milwaukee points served in Iowa.

Q. Do you know whether they are in western Iowa, or eastern Iowa, or southern Iowa?

A. Probably in northern Iowa.

Q. In northern Iowa? Would you mean by that the area around Mason City, Iowa?

A. I'm sorry. My geography isn't too—

Q. You don't know where Mason City is?

A. I haven't the slightest idea.

Q. Well, the sum and substance of your testimony at this time is that you can't particularize as to what points in Iowa your company had difficulty at that time or now has difficulty in respect to the adjustment of rates so far as east of Mobridge is concerned, is that true?

A. If you'll give me a map of the area served by the Mil-
[fol. 1708] waukee, I'd be glad to oblige you.

Mr. Boe: I have nothing further.

By Mr. Musenbrock:

Q. Mr. Wicker, your difficulty in serving the Milwaukee branch points in Iowa was with the fact that you didn't have any single factor rate via the Milwaukee all the way from Spokane to the Iowa points, wasn't it?

A. I particularly was complaining about not being able to start a car at Sweet Home, Oregon, on the Oregon Electric, stopover at St. Maries, Idaho, or other points on the Milwaukee Railroad, to complete loading, and to get a full line of rates east of Mobridge. That was my complaint. I had no other interest in the matter.

Q. Then your difficulty wasn't with the routing at the destination point. Your difficulty was with the fact that you didn't have any right to complete loading at St. Maries (pronouncing) or St. Maries (pronouncing), or whatever you call it.

A. St. Maries (pronouncing) is correct.

Q. That was your difficulty, not that you didn't have any routes into these Iowa points?

A. No, I didn't say that. I said the particular thing that I was complaining about was as I previously stated.

Q. All right.

A. I've had difficulties with diversions off of the Milwaukee line east of Mobridge when a car has been refused or for some other reason it has not been able to get to destination.

[fol. 1709] Q. You testified you dealt in firm orders so that, if you had a car originating at Lebanon, a complete car—not a stop car at St. Maries, but a complete car from Lebanon to a Milwaukee point in northern Iowa, you at the present time have through routes with transit privileges, do you not?

A. That is correct.

Q. Now, what would this proposal do? What would it give you on that kind of a car that you do not have at the present time?

A. I deal in firm orders, but, for instance, yesterday, I had a car refused because the consignee didn't like the tally that I had in the car, and it became necessary to divert that car to another location.

Q. Do you understand that under the new proposal you will get something in addition in connection with a car like that that you do not have at the present time if that car had moved Lebanon, Minnesota Transfer, GN or NP, and then Milwaukee to destination?

Do you understand that this new proposal would give you something on that refused car that you do not have now?

A. I understand that I would be able to take a car off the Oregon Electric and stop it on the Milwaukee for complete loading.

Q. Let's forget this complete loading. I appreciate what your prior testimony was and what it is this morning about St. Maries complete loading. I'm speaking of a full car from Lebanon.

[fol. 1710] A. On full cars, on that I would not be prepared to say, as far as full cars are concerned.

Q. You don't know then on the full cars what you would get under the Milwaukee proposal that you do not have at the present time in the case of a refusal at destination?

A. Well, the possibility that we will get additional cars on the Oregon Electric from car interchange with the Milwaukee.

Q. Now, you're going into car supply?

A. Yes, I am. I'm very interested in it.

Q. Well, I'm not interested in that. My question was as to what service you would get under this new proposal in northern Iowa that you do not now have, and that's all. You have nothing to add to that, to what you've already testified?

A. Well, I did add that we'd get additional cars.

Mr. Musenbrock: Thank you.

Mr. Rockwood: May I, with the permission of the Examiner, ask Mr. Wicker a couple more additional questions?

Exam. Dishman: All right.

Mr. Rockwood: It's in the light of this cross examination.

By Mr. Rockwood:

Q. You say, yesterday a car was refused?

A. That's correct.

Q. What was the origin of that car?

A. The origin of that car happened to be Redding, California.

Q. And what was the billed destination of that car?

A. It was going to Birmingham, Alabama.

[fol. 1711] Q. And where was the car at the time that you were advised that the buyer didn't want it?

A. It was on the Central of Georgia.

Q. Had it been—was it rolling on the Central of Georgia?

A. That's correct.

Q. Short of Birmingham?

A. That's correct.

Q. And what route did that car take on the way east?

A. I haven't the slightest idea of the exact routing.

Q. Did you bill the car?

A. The person in my office that did the routing billed the car.

Q. What did you do with the car?

A. The car was sold in Charlotte, North Carolina, this morning.

Q. On the Central of Georgia?

A. No.

Q. On what railroad?

A. I didn't handle the diversion. I don't know.

Q. How many cars in the last six months or the last six months of 1954 have been declined by the firm buyer?

A. Oh, not more than eight or ten cars.

Q. You had as many as eight or ten?

A. Yes.

Q. Don't you think that your experience runs a little higher than the industry generally?

A. No, I don't think so. I believe it's about average.

[fol. 1712] Q. You think it is?

A. Yes.

Q. Those eight or ten, were they refused while the car was rolling because the tally didn't jibe with what the buyer thought he was going to get?

A. As a rule because of the tally. The buyer probably got narrower width stock than he anticipated or too many short lengths, and there are times that the mills will load items that are not specified on the order at all.

Q. Did you ever buy lumber at St. Maries, Idaho, from the St. Maries Lumber Company?

A. Yes, I have.

Q. As George R. Wicker, or as one of the companies for whom you worked?

A. Both ways.

Q. What did you buy from St. Maries in the last six months?

A. The last car I recall buying from St. Maries was 2 by 4's dry white fir.

Q. You bought fir from St. Maries?

A. Dry white fir.

Q. Kiln-dried dry white fir?

A. That's right.

Q. A carload?

A. I bought a part car.

Q. Where did the lumber originate which—in which the

[fol. 1713] St. Maries lumber went?

A. I don't recall where the car originated in Oregon, but it wasn't on the Oregon Electric.

Q. It was on a route—

A. Which took a through rate.

Q. It was on the Southern Pacific?

A. Probably so, yes.

Q. Or the Union Pacific?

A. It would have been on the Southern Pacific.

Q. That was a firm order?

A. That was a firm order.

Q. You had no trouble stopping that car?

A. No.

Q. Have you ever stopped a car east of Spokane on the Great Northern to complete loading?

A. No, I don't believe I have.

Q. Did you ever stop a car to complete loading on the Northern Pacific east of Spokane?

A. No.

Q. How many cars in the last six months have you stopped at any point east of Spokane to complete loading?

A. Not in excess of 15 or 20 cars at the outside.

Q. As many as 15 or 20 cars?

A. Yes.

Q. Where would they stop?

[fol. 1714] A. Stopped at various points east of Spokane. I've stopped them at Missoula, Montana.

Q. On the Milwaukee?

A. Whatever road serves Missoula. I don't know. It doesn't happen to be any trouble with the routing on that particular stop.

Q. The Northern Pacific serves Missoula, Montana, does it not?

A. I'm sorry, I'm not completely familiar with the geography of the railroads.

Q. And you think you stopped 15 or 20 cars out of 500?

A. About that, yes.

Q. Where were the others stopped?

A. I stopped them at Missoula, Montana. I stopped them at Libby, Montana. I stopped them at Reno, Nevada, and St. Maries, Idaho, Grangeville, Idaho.

Q. On what line is Grangeville?

A. There again I'm not qualified.
Q. Isn't that on the Union Pacific?
A. I don't know.
Q. What line is Libby, Montana, on?
A. I believe that Libby, Montana, is on the—I'm sorry, I'm not qualified to answer that.
Q. Isn't that on the Great Northern?
A. I don't know. In our business, we would go look at a routing guide. We wouldn't guess at that.
[fol. 1715] Q. What was the origin of the car which you stopped at Libby?
A. It would have—
Q. No, not what it would have. What was it? Do you know?
A. I don't know offhand.
Q. When was it?
A. August or September.
Q. Of 1954?
A. Of '54.

Mr. Rockwood: That's all I have.

By Mr. Hillman:

Q. Mr. Wicker, at Page 397, on cross examination, in June, 1954, you referred to four cars which were billed to Merrill, Wisconsin, that were necessarily diverted.
A. That's correct.
Q. Do you recall what the origin point was for those cars?
A. Yes, I do. Marysville, California.
Q. Marysville, California?
A. That's correct.
Q. Do you recall what the routing was on those cars?
A. No, I don't. I don't recall how they were routed.
Q. Did they go over a northern route?
A. The routing was specified by the buyer in that particular instance, and that's the way it would have been routed because they specified the routing.
Q. You don't recall then, I take it, what might have been the limitations on your diversion rights with respect to those cars?
[fol. 1716] A. No. That's quite a while back.

Q. You don't know whether diversion rights were possible, or if they might have been limited?

A. Yes, I thoroughly recall that we didn't have very broad diversion rights in that we had a great deal of difficulty in trying to find a location to put those cars.

Q. You don't recall what particular roads that your diversion rights might be limited to?

A. I believe it was limited to the Milwaukee. We had to go to—the cars eventually—I put those cars eventually into Wausau. I managed to divert those cars into Wausau, Wisconsin, and when we diverted them or rebilled them, I don't recall.

Q. But those cars were not of the type which would be involved in this proceeding because they did not originate on the SP&S in Oregon?

Mr. Maguire: Just a minute—

The Witness: No, I believe that—

Mr. Maguire: Just a minute, Mr. Wicker. I believe, if Counsel will read the transcript a little more thoroughly, he will find that they're not involved in this proceeding.

Mr. Hillman: Mr. Maguire, I have—

Mr. Maguire: Just a moment. I'm stating an objection here. If you will read right above that on Page 397, Examiner Dishman asked: "Do you have many cars refused?" The witness, "Very few. I had, that I can recall, I had four, that is, in the last year."

[fol. 1717] Now, that question went in, and that was on the question of cars refused in general, not cars off the SP&S, and I think that that is very obvious from reading the record, and there was no need of beating that over with the witness.

Mr. Hillman: Well, Mr. Maguire, that was my final question on this point.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Are there any other questions of the witness on cross examination?

(No response.)

Exam. Dishman: Anything more, Mr. Maguire?

Mr. Maguire: Yes, I have a couple questions.

Redirect examination.

By Mr. Maguire:

Q. Were your activities in the last half of 1954, your business activities, restricted in any way or limited in any way by reason of the strike which was prevalent in the lumber industry in the Northwest in '54?

A. Yes, very much.

Q. And do you recall when that strike generally started and when it terminated?

A. It started in the last half of June or the beginning of July, and dragged out in various phases of the industry [fol. 1718] up till—well, nearly till the end of November.

Q. And was the volume of your business, both as a wholesaler and as a mill agent, affected by the strike?

A. Naturally.

Q. That naturally reduced your business?

A. Yes.

Q. Now, there has been a lot of mess kicked up here about your former employment and your former association—

Mr. Rockwood: Thank you for your characterization of my cross examination.

Mr. Maguire: Well, I think it's a pretty accurate one, and I will say: You're welcome.

By Mr. Maguire:

Q. Were the facts, to which you testified in the June hearing, affected one way or the other by whether you were a partner and the Manager in the Coastal Forest Products Company, or whether you were an operator as George Wicker?

Mr. Rockwood: Objected to as improper redirect examination. I brought out the facts as to who he was connected with at the time and who he had previously been connected with, and as to whether this witness was perjuring himself, or anything of that nature, is improper and irrelevant.

Mr. Maguire: I'm not asking him whether he is perjuring himself, but Counsel had what I choose to characterize as a sinister motive to bring that up, and I think we're entitled to clear it up.

[fol. 1719] Exam. Dishman: Inasmuch as the matter was brought up by you, Mr. Rockwood, the witness may answer.

The Witness: You'll have to repeat the question then. I lost it in the shuffle here.

Mr. Maguire: Will you read the question, please?

(Question read.)

The Witness: No.

By Mr. Maguire:

Q. And were you—well, strike that.

Mr. Maguire: I think that's all, Mr. Wicker.

Mr. Rockwood: I have just a speck more of dust, Mr. Examiner, if I may ask it.

Exam. Dishman: All right.

Recross examination.

By Mr. Rockwood:

Q. You say that the strike lasted in some of its phases as late as November, 1954?

A. Yes.

Q. The industry was practically in full production, was it not, early in September of 1954?

A. No, it was not.

Q. The strike—many companies began operating early in September, 1954, did they not?

A. Many of them did.

Q. And throughout the strike period, from the end of June up to the beginning of September, many companies did not suspend operations at all?

[fol. 1720] A. There are a few that did not suspend operations.

Q. Numerically, weren't there a great many?

A. There were a number of small producers that did not suspend.

Q. Didn't some of the larger producers go right through without suspension? Do you know?

A. None of those that I dealt with.

Mr. Rockwood: That's all.

Redirect examination.

By Mr. Maguire:

Q. And regardless of how many mills numerically operating during that time, how did the general strike situation during the period you mentioned affect the supply of lumber available for wholesalers and mill agents?

A. Well, it materially reduced the lumber available to wholesalers and mill agents, as many of the mills producing this lumber were able to move the small volume that they had available through their own sales organizations.

Mr. Maguire: That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Wishman: We will now take a short recess.

(Short recess taken.)

Exam. Dishman: We will now take a short recess.

Mr. Rockwood: May I comment on Mr. Selby's cross examination?

Mr. Maguire: Yes.

[fol. 1721] Mr. Rockwood: We have prepared in the interim since Mr. Selby left the stand a tabulation to show the destinations, the first stop, second stop and third stop, if any, routing, and car number for each of the cars covered by the bills which Mr. Selby handed to us.

Now, I realize that, if I proceeded to cross examine, I would be here probably for about two days more to verify this statement. I was wondering if I could hand this to Mr. Selby right now and ask him if he could check that during the noon hour, and then possibly the examination would be very brief after the tabulation was checked.

Mr. Maguire: If I could look at it.

Mr. Rockwood: I don't want to have to go down through it, car by car, with Mr. Selby and take up everybody's time to build up that tabulation. I was hoping that, if he took it right now, he could check it before 2 o'clock with the assistance of—we can give him some assistance if he wants it, some clerical assistance, or maybe you have it.

Mr. Maguire: We have some.

Mr. Rockwood: I assumed that you had.

Mr. Maguire: Are these the documents in question?

Mr. Rockwood: Yes.

Mr. Maguire: If you'll just let me have those, I'll hand them to Mr. Selby and have him start on that. I think he can get it done some time this afternoon.

[fol. 1722] Exam. Dishman: Mr. Rockwood, does he understand just what you want him to develop?

Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Maguire: The next witness is Einar Linstad, and Mr. Linstad's testimony at the June hearing commences on Page 652 in Volume IV of the transcript.

Einar Linstad having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Linstad, as I understand it and as you testified at Page 654 of the record, your firm handles only firm orders?

A. Oh, I'd say about 95 per cent of them.

Q. Do you ship off the Santiam Branch of the Oregon Electric?

A. Yes, we do, sir.

Q. And you ship from other main line points of the Oregon Electric in the Willamette Valley?

A. Yes.

Q. You are aware of the fact, are you not, Mr. Linstad, that from all points on the SP&S System, which includes the Oregon Electric and Oregon Trunk and the SP&S itself, except the Santiam Branch, you have rates which apply from SP&S origins via Spokane and the Milwaukee [fol. 1723] Railroad to all local points on the Milwaukee east of Mobridge?

A. Yes, sir.

Q. You're aware of that, and you're aware of the fact that from Vernonia and certain other points on the SP&S, which take the Vernonia rate by intermediate application, you have rates via Spokane and the Milwaukee to points on the Milwaukee between Missoula and Mobridge, as well as to points east of Mobridge? You're aware of that?

A. On the Milwaukee, yes.

Q. Yes. Now, if the rates from all SP&S points, including the Oregon Electric, Oregon Trunk, and SP&S itself, and including the Santiam Branch, were made applicable via Spokane and the Milwaukee to all local points on the Milwaukee east of Spokane, you could then ship firm lumber, firm orders, from all SP&S stations to all local points on the Milwaukee east of Spokane, could you not?

A. Including the Santiam Branch?

Q. Yes, including the Santiam Branch.

A. Yes, we could.

Q. If rates were made so applicable, what more would you want?

A. We'd also like the privilege of, in the event of a refusal, to make a diversion. We would like to be able to divert through Chicago, to that territory. We don't know where it would be.

Q. Yes. How many carloads of lumber did you ship—[fol. 1724] do you ship per year?

A. I'm not at liberty to divulge that.

Q. You won't tell us?

Mr. Maguire: He says he's not at liberty to divulge it. Now, that is his answer; not that he won't tell you. He's not at liberty to divulge it.

By Mr. Rockwood:

Q. The fact is that you will not tell us?

A. I'm not at liberty to do so.

Mr. Maguire: Well, I—

Exam. Dishman: We have enough on that. Let's proceed.

Mr. Rockwood: This was prolonged simply because of Mr. Maguire's comment.

By Mr. Rockwood:

Q. How many carloads of lumber do you sell per year which originate at points on the SP&S?

A. I'll have to answer that also the fact that I'm not at liberty to answer it.

Q. Will you tell us what percentage of your annual sales are affected by rates off the SP&S?

A. It would be very difficult to say without looking at the records.

Q. And you won't tell us?

A. I don't have the records available, and, if I did, I don't think I'd be at liberty to answer that.

Q. You ship off railroads other than the SP&S, do you not?

A. Yes, sir.

[fol. 1725] Q. What percentage of your business is affected by this rate situation as you find it on the SP&S?

A. I think I've already answered that.

Q. That you decline to tell us?

A. That I'm unable to divulge that information.

Q. How many cars in any period that you wish to select, any annual period, were rejected—I'm speaking now of firm orders—were rejected by your customer at the destination to which you first billed?

A. It's a small percentage—oh, maybe—I'd say three to five per cent as an estimate.

Q. That would be 30 cars out of a thousand shipped?

A. I don't know, sir.

Q. Does it run as high as that?

A. Well—

Mr. Maguire: His answer was, Mr. Examiner, three to five per cent.

Mr. Rockwood: I'm now pursuing my cross examination.

Mr. Maguire: Well, now—

The Witness: I can't tell you our volume of business.

Mr. Maguire: Just a minute, Mr. Linstad.

Exam. Dishman; I think he's got the answer on that.

By Mr. Rockwood:

Q. I asked: Is it as many as 30 out of a thousand cars?

A. That—I answered that it is possibly three to five [fol. 1726] per cent of our total volume, and I've already told you we can't reveal our total volume.

Q. Well, I'm not asking you to reveal your total volume in this question, which would amount to 30 to 50 cars out of a thousand—out of every thousand cars you ship?

Mr. Maguire: That's just plain arithmetic.

The Witness: That's the percentage.

By Mr. Rockwood:

Q. Is it as many as that?

A. Well, three per cent of a thousand, that would be 30.

Q. I say: In fact, are your rejections as many as 30 to 50 out of every thousand cars you ship?

A. Yes, sir.

Q. What is the nature of those rejections? For what causes?

A. I think it would be for many causes. I think I heard Mr. Wicker on the stand a few minutes ago and—

Q. Don't quote Mr. Wicker. We've had his testimony.

A. He went into that.

Q. We want your testimony. What are the causes of rejections on your shipments?

A. Oh, it could be from the fact that the mill does not load the percentage of lengths, we'll say, of the specified lengths as required by the order. It could be from downgrading of the material itself, or possibly we're a little late on shipment. There could be many reasons.

Q. Well, now, you've told us what it could be. Will you [fol. 1727] tell us, please, what the causes of rejection have

been? Not what they could be, but what they have been in any past period.

A. It could have been any one of—

Q. Don't tell us what it could have been. Tell us what it has been, what it was, in fact.

A. I don't intend to give you any specific instance.

Q. You decline to, or you don't remember?

A. I can't recall.

Q. So, you cannot tell for any specific instance what the cause of rejection was in fact, is that the answer?

A. A specific instance, it would probably be—

Q. Don't tell us what it would probably be. I want the precise facts.

A. I can recall one instance where we were late on a shipment.

Q. You were late on a shipment?

A. Yes.

Q. When was that?

A. Oh, that must have been at least—some time during 1954 or—well, early in 1954.

Q. Where was that car billed to?

A. I can't even recall that now.

Q. Was it east of the Mississippi River, or west of the Mississippi River?

A. West of the Mississippi.

Q. In what state was it?

[fol. 1728] A. It was in Minnesota, as I recall it.

Q. In Minnesota. On what railroad?

A. The Milwaukee.

Q. Where did that car originate?

A. It originated at Foster, Oregon.

Q. Foster, Oregon—that's on the Santiam Branch. Did that car move via Minnesota Transfer?

A. No. No, it did not.

Q. How did it move?

A. It moved via Spokane.

Q. And the Milwaukee?

A. That's right.

Q. To a Milwaukee local destination in Minnesota?

A. As I recall it, yes.

Q. As a matter of fact, there is no through rate over that route, is there?

A. We were forced to pay a combination.

Q. I would like to have the bill of lading produced on that car. Will you—I don't want the name of your customer, but I want a copy of the shipping order. Can you give us the car number?

A. I don't think my firm would permit that, sir.

Q. Can you give us the car number?

A. I don't have it available.

Q. Did that car in fact move via Spokane and the Milwaukee? Did it in fact move?

[fol. 1729] A. Sir? Will you repeat that?

Q. Did that car in fact move via the Milwaukee out of Spokane, or did it, on the other hand, move via the Milwaukee out of Minnesota Transfer?

A. To the best of my recollection, I believe it moved through Spokane, Milwaukee.

Q. Can you state it as a positive fact?

A. I certainly am not going to, but to the best of my recollection.

Q. So, you're not sure?

Mr. Maguire: Your own conclusion can be drawn from that. That's heckling the witness.

Mr. Rockwood: It isn't heckling the witness, at all. Be quiet, Mr. Maguire.

Mr. Maguire: I'm going to state an objection any time I feel like it, even though I tread on your dignified toes.

Mr. Rockwood: Please let me cross examine the witness.

Mr. Maguire: I object to your question.

Exam. Dishman: Mr. Witness, are you sure of that, or can you state it to be a positive fact?

The Witness: I said to the best of my recollection, sir. I am not—I have not had the records out within the last year to verify that.

By Mr. Rockwood:

Q. Isn't it fair to say, Mr. Linstad, when you said to the best of your recollection, you cannot state that as a positive fact?

[fol. 1730] A. You can draw your own conclusions from that.

Q. Will you please tell me: Can you state it as a positive fact?

Mr. Maguire: Just a minute.

Exam. Dishman: I asked the witness. I wish you would answer. Can you state that as a positive fact?

The Witness: No, because I've been answering to the best of my recollection.

Exam. Dishman: All right.

By Mr. Rockwood:

Q. Can you give us another example of a rejected car?

A. I don't think I can offhand.

Q. So that, although you get maybe 50 cars out of a thousand, you can't remember any other specific car, other than this one that went into Minnesota?

A. We handle quite a little volume. I can't remember a year or so ago what happened every day.

Q. And you cannot give us another precise example of a car, for which you can state the reason for rejection?

A. No, sir, I'm afraid I can't.

Q. That one car that you talked about, was that to a customer that had a spur track of his own, do you know?

A. I can't recall.

Q. Was that car—did it ever reach the original billed destination?

[fol. 1731] A. I don't think it did, as I recall it. I believe it was en route because we were late.

Q. What did you do with that car, that particular car?

A. I can't recall.

Q. How many cars have you had rejected in the past 30 days?

A. We haven't had any rejected in the last 30 days.

Q. When was the last car rejection that you can recall?

A. Within what period, sir?

Q. The last one, since back to the beginning of time.

A. It's been quite a little time, I guess. I can't really tell you.

Q. Was it six months?

A. It might have been six months.

Mr. Rockwood: That's all.
Mr. Boe: I have some questions, Mr. Examiner.
Exam. Dishman: All right, Mr. Boe.

By Mr. Boe:

Q. Mr. Linstad, Mr. Maguire asked you at the June, 1954, hearing what your sales area was, Page 683 of the transcript.

Mr. Maguire: What page, Mr. Boe?
Mr. Boe: 683.

By Mr. Boe:

Q. And your answer was, "It extends all over the country . . ." The complete answer is, "It varies. It extends all over the country . . ." Do you recall that statement, at any rate?

[fol. 1732] Mr. Maguire: 683?
Mr. Boe: If I read your print here correctly.
Mr. Maguire: That's Mr. Pierce's testimony on 683.
Mr. Rockwood: 653.
Mr. Boe: 653, yes. The print is rather indefinite. On 653, the question was asked by Mr. Maguire.
Mr. Maguire: Oh, yes. Thank you.

By Mr. Boe:

Q. Now, with respect to the territory roughly on a line north and south through Omaha, Nebraska, from the northern boundary of the United States to the southern boundary of the United States, and the Mississippi River on the east, can you or will you state what proportion of your company's business is done in that area, compared with your total?

A. That's a pretty hard question to answer. In fact, I think it would be almost impossible to answer without looking at our records.

Q. Would your answer be the same as far as the territory east of the Mississippi River is concerned?

A. Oh, east of the Mississippi, possibly 25 per cent to 30, maybe about a third possibly.

Q. Well, am I to understand that your memory at this time is so vague that you can't be specific as to the volume of your company's business east?

A. Our volume varies from time to time. We're engaged in export business which is a considerable volume. Then [fol. 1733] again we're in a phase of transcontinental business. Our interests are varied with crossarms, poles, piling, lumber, logs. It's very difficult to say.

Q. Well, the export business moves through what ports?

A. Gulf ports, Pacific Coast, sometimes east coast ports.

Q. With respect to 1954, what was the situation as far as your company was concerned? Was it predominantly export or domestic?

A. I'd have to get out all the records and go over them. I really can't say. It changes with every month.

Q. You don't know?

A. I can't say.

Q. What proportion, if any, of your export business moves through Minnesota Transfer?

A. A very small proportion, I would say.

Q. When you say "very small", would you say one per cent or two per cent?

A. Yes, I think it might run that small.

Q. So, as far as your export business is concerned, the rates that are in dispute here are not involved in that situation, is that correct?

A. Well, to a very slight degree, I'd say.

Q. In other words, one per cent, is that right?

A. Yes, I think so.

Q. Now, let me question you a little bit further about your domestic business. What proportion of your domestic [fol. 1734] business moves through Minnesota Transfer?

A. Oh, I would say roughly about 25 per cent of it.

Q. And of that 25 per cent, would you say to what territory beyond Minnesota Transfer that moves?

A. Not specifically. It goes everywhere. I can't tie it down.

Q. You're not quite clear about that. You wouldn't say it would move west again, would you?

A. The rates do not apply that way.

Q. But you're unable from memory to give generally the destination, the final destination area of that 25 per cent that moves through Minnesota Transfer, is that correct?

A. From memory, I can't do it.

Mr. Boe: That's all.

By Mr. Torinus:

Q. Mr. Linstad, I have just one question. Going back to that Foster car, which was rejected, and which you testified about, was that a car with respect to which Niedermeyer Martin was the consignor?

A. At the first original billed destination, it was.

Q. That car that you billed out of Foster, that you testified was rejected some place in Minnesota, was Niedermeyer Martin the consignor?

A. Originally, yes, sir.

Mr. Torinus: Thank you. That's all.

Exam. Dishman: Any more questions?

Mr. Maguire: Yes, Mr. Examiner.

[fol. 1735] Redirect examination.

By Mr. Maguire:

Q. Mr. Linstad, do you have authority from your company to divulge details of the distribution of their business? I have reference to the questions by Mr. Rockwood where you stated that you were not at liberty to answer. Do you have authority to answer to that?

A. No, sir, I have no authority on that.

Mr. Maguire: That's all. Thank you.

Mr. Rockwood: I have one question.

Recross examination.

By Mr. Rockwood:

Q. Do you have authority from your company to appear as a witness in this case?

A. Yes, sir.

Mr. Rockwood: That's all I have.

Mr. Maguire: What was that?

Mr. Rockwood: Let the Reporter read it.

Mr. Maguire: Thanks for your courtesy in letting me get it from the Reporter. I won't need it.

Exam. Dishman: Witness excused.

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Mr. Maguire: These are all of the shipper witnesses that we have available this morning, and there will be Mr. Selby coming back this afternoon, and another witness later in the afternoon, and, if it is desirable, we can place Mr. Engel on the stand at this time for cross examination.

[fol. 1736] Mr. Rockwood: Just a minute, Mr. Maguire.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. Ask the question again, Mr. Rockwood.

Mr. Rockwood: I will repeat: Of the witnesses included in my letter of January 11th, who have not yet appeared for cross examination, included were Mr. Engel, Mr. Pugh, Mr. Hemphill, Mr. Ruddick, Mr. Carr, Mr. Jaynes.

Of those, Mr. Engel is here for cross examination. Mr. Pugh, we are told, will be here Monday, and Mr. Ruddick will be here this afternoon. Mr. Carr and Mr. Jaynes will appear at the St. Paul hearing, we are informed, and I asked Mr. Maguire where Mr. Hemphill is.

Mr. Maguire: We were told at one time, Mr. Examiner, by Mr. Hemphill's employer that Mr. Hemphill's presence had been waived. Acting upon that, I went to Eugene, Oregon, last week to interview certain of these witnesses and to serve their subpoenas on them. I did not, acting under that understanding, serve any subpoena upon Mr. Hemphill.

After my return, I found, though I did not get any specific statement from Mr. Rockwood, that there might be

some question about the waiver of Mr. Hemphill's appearance, and he suggested that I should subpoena him and have him come up here just in case.

[fol. 1737] Well, I was not going to take a man away from his business on a nebulous statement of that sort, and, so, therefore, I do not intend to call him, and it is perfectly clear to me and understood by me that Mr. Hemphill's testimony definitely given at the Portland hearing cannot be used against the new defendants in the case. That's well understood, and it will be a question of the disposition of the Commission after argument as to what use will be made of his testimony in connection with the case against the SP&S and its subsidiaries.

Now, it is my understanding that I was under no order here to subpoena anyone, but it was with the understanding that, if I wished that testimony to be used in connection with the new defendants, that they should be here for further cross examination if so demanded, and I am not producing him for that reason.

Mr. Rockwood: Or any other defendants. I want to say no waiver was made by anybody connected with this case either as Counsel or as a representative of any defendant in this case, any intervenor in support of the defendants.

Mr. Maguire asked me last week—

Mr. Maguire: Friday, after my return from Eugene.

Mr. Rockwood: I don't care.

Mr. Maguire: I do. I want the record to be clear on that.

Mr. Rockwood: All right. Mr. Maguire asked me last week—and I take it that he's been careful to make a record or memorandum so that he knows what the facts are—he [fol. 1738] says Friday—inquired of me whether we waived the calling of Mr. Hemphill, and I said, no, we did not.

Mr. Maguire: Now, as a matter of fact, if you want to get the full conversation and all of the background of this into this record, I'm perfectly willing to do it. Do you want to?

Mr. Rockwood: The fact is—

Mr. Maguire: Do you want to now?

Mr. Rockwood: No, I don't.

Mr. Maguire: I don't think you do.

Mr. Rockwood: I resent that charge. The fact is we did not waive it. Now, we're not going to have Mr. Maguire repeat a lot of hearsay talk and give his interpretation.

Exam. Dishman: There's enough on the record as to why Mr. Hemphill is not here. Anything more would just be merely cumulative. So, let's proceed.

Who is our next witness, Mr. Maguire?

Mr. Maguire: Mr. Engel will be available for cross examination at this time.

I do wish—there was an insinuation made by Mr. Rockwood, and I think there's a reflection upon me which I wish to clear, and I can do it very briefly. I had been informed—

Mr. Rockwood: There's enough on the record, and I'm not going to have Mr. Maguire flood this record with what he may have heard from others outside.

Mr. Maguire: I'm not going to say what I heard from [fol. 1739] anyone else.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Let the record show that Mr. Maguire, in answer to a question by Mr. Torinus, will now explain what purpose he proposes to make of Mr. Hemphill's testimony in view of the fact that he is not here now for cross examination.

All right, Mr. Maguire.

Mr. Maguire: I do not intend to use Mr. Hemphill's testimony against the new defendants, but I do intend to use his testimony to the very utmost, the Commission will permit it to be used against the original defendants and the original parties who were in attendance at the Portland hearing.

Beyond that, I don't [illegible]e to elaborate at this time.

Mr. Torinus: Und[illegible]e issues as raised by the amended complaint after the Portland hearing, is that correct?

Mr. Maguire: Which are the issues raised by the amended complaint and which are identical with those raised by the original complaint. The only difference is in parties, and so, therefore, as I say, I intend to use it under what you call the new complaint to the fullest extent that the Commission will permit. That will be a matter of argument between you and us.

Mr. Torinus: Thank you. That's just what I wanted to know.

Exam. Dishman: Will you call your next witness?

[fol. 1740]

MOTIONS TO STRIKE FROM THE RECORD THE TESTIMONY OF MR. HEMPHILL

Mr. Torinus: Mr. Examiner, before Mr. Engel takes the stand, I now move to strike from the record the testimony of Mr. Hemphill.

Exam. Dishman: Well, the Examiner is not going to pass on that. You can let that stand as a motion made on the record, or you can file a new motion with the Commission, whichever you want to do.

Mr. Torinus: Well, I would like to have a ruling now.

Exam. Dishman: No, I'm not going to rule. I'm not going to rule on it. You may file a motion with the Commission if you desire, or you can let the motion stay of record, and it will be considered.

Mr. Rockwood: I wish to make a motion to strike the testimony of Witness Hemphill on behalf of Defendants SP&S Railway Company, Oregon Electric Railway Company, and Oregon Trunk.

Exam. Dishman: It will be the same ruling, that you may file a formal motion with the Commission.

Mr. Rockwood: I take it that will not be necessary, that this will stand as a motion to strike?

Exam. Dishman: This will stand as a motion. It will stand on the record and will be considered.

Mr. Rockwood: And the Commission will have the opportunity to consider the propriety of the Examiner's action thereon?

Exam. Dishman: That's right.

Mr. Musenbrock: I want to make a motion on behalf of [fol. 1741] my railroad, one of the new defendants, that the testimony of Mr. Hemphill be stricken in its entirety.

Exam. Dishman: It's on the record.

Mr. Musenbrock: I want to elaborate a slight bit on the record. My position at the Chicago hearing, after we made the proper motions, because of the late date on which we were added as defendants, that we had not had the oppor-

tunity of examining these witnesses at Portland in June, '54.

The Commission overruled our motions of record with the order that these witnesses would be available here at Portland at this hearing.

Now, unbeknown to us, somebody took it upon themselves not to subpoena these witnesses.

Mr. Maguire: One witness.

Mr. Musenbrock: Whether it was the Complainant or the Commission, to me is immaterial. I am not in a position to accept verbatim merely the offer of Complainant saying that that testimony at the June, '54, hearing will not be used against the additional defendants, because I don't know how the Commission is going to take it.

Exam. Dishman: The Commission will determine that.

Mr. Musenbrock: So, therefore, I move at this time that all of that testimony be stricken for lack of Mr. Hemphill being here for further cross examination.

Exam. Dishman: All right, your remarks are of record, [fol. 1742] and they will be considered when the record is taken under consideration.

Mr. James: I'd like to join in that motion.

Mr. Boe: I too for the defendants, the new defendants I represent.

Exam. Dishman: All right, let the record so show. Are you ready to proceed, Mr. Rockwood?

Mr. Rockwood: I have no further cross examination of Mr. Engel.

Mr. Musenbrock: I have some questions.

Mr. Torinus: I have no questions.

H. O. Engel having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Musenbrock:

Q. Mr. Engel, I am not so sure, from the present record, from your direct testimony and the cross examination of Mr. Rockwood and the defendants out here last year, just

exactly what rates the Milwaukee has in connection with lumber off of the SP&S System to points in Minnesota, Iowa and east of Mobridge—all destinations east of Mobridge.

I want to preface that statement because some places in the record it is stated to Milwaukee points, and others, like in Exhibit 4, it's stated that the rates are to exclusive Milwaukee points, and, on cross examination, you stated that [fol. 1743] it wasn't to exclusive Milwaukee points, that there are exceptions.

Now, for my purposes in the record, I would like to have you make a clear statement just what kind of lumber rates the Milwaukee has at the present time from the SP&S System, single factor Milwaukee rates east of Mobridge.

A. You want a thumbnail sketch of rates that we have?

Q. I don't want a thumbnail sketch. I want as detailed a sketch as I can.

A. Well, I—

Mr. Maguire: Just a moment, Mr. Engel.

Now, Mr. Examiner, the information that Mr. Musenbrock asks for, he's asking Mr. Engel to repeat his direct examination in this case. Mr. Musenbrock has the record, and he has the exhibits.

Exam. Dishman: You testified to that at the Portland hearing last June, Mr. Engel?

The Witness: Yes, sir.

By Mr. Musenbrock:

Q. All right, Mr. Engel, let's take it up piecemeal. In Exhibit 4, you state the lumber, shingle and other products rate, Agent Prueter's tariff, from the stations on the SP&S and the Oregon Electric, except the Santiam Branch, to stations on the Milwaukee in South Dakota east of Mobridge, North Dakota except Linton, Edgeley and Fargo, also to Omaha, Nebraska.

Now, I want to know whether that rate is to Milwaukee [fol. 1744] stations exclusively, that is, local Milwaukee stations, or is it also to common points on the Milwaukee?

A. First, I want to direct your attention to the heading on that exhibit, which states that the list of rates shown

are those applicable via Spokane, Washington. Now, via Spokane, Washington, the rates apply only to points on the Milwaukee and do not include origins on the Santiam Branch, and, further with respect to the M&StL—

Q. Let's keep the M&StL out of it. I asked you whether the rate at the destination was—or the point of destination was a local Milwaukee point or a common point.

A. That is correct.

Q. What is correct?

A. That it includes only points on the Milwaukee, whether they are local or common points. There may be some common points by virtue of intermediate application of a local point beyond, but they are all points on the Milwaukee Railroad only.

Q. The only application then as to a common point is the intermediate application because of a farther distant point as to a common point?

A. Yes, I believe that's correct.

Q. Now, let's go to the next one. Lumber, shingles and other forest products—it's the second bracket—stations on the SP&S and the Oregon Electric, except the Santiam Branch, to stations served exclusively by the Milwaukee in [fol. 1745] Minnesota, Wisconsin, Iowa, Illinois, except the Terre Haute branch, and Missouri, and also some other points common with other lines, generally applicable through intermediate application. Let's forget intermediate application for the moment.

Where you say "stations served exclusively by the Milwaukee", does that mean only local points on the Milwaukee, or does it mean at common points also on the Milwaukee?

A. No. I distinguish between a common point and—I treat an exclusive point as a local point. In other words, when I talk about a local point, I mean one that is served only by the Milwaukee Railroad.

Q. So that as to points east of Mobridge, the single factor rate is restricted to local points on the Milwaukee only, forgetting for the moment this intermediate application? Is that correct?

A. The single factor rate via Spokane to points on the Milwaukee includes both local and common points as stated in this description on the exhibit.

Q. Well, does it? You have a different description in the second block than in the first block. On the North Dakota points, you merely say stations on the Milwaukee, and, in the second block, as to territory east of Mobridge, you say stations served exclusively by the Milwaukee. Now, there must be a reason for the different language.

A. I don't believe there is any different intent. My understanding is that we have rates from points on the SP&S and [fol. 1746] Oregon Electric, with the exception of the Santiam Branch, to points on the Milwaukee east of Mobridge in both tariffs, the 18 and the 28 tariff, including local and some common points.

Q. So that under your interpretation of the second block on Exhibit 4, the Milwaukee has a single factor rate over Spokane to Mason City, Iowa, which is a common point with the M&StL, the Rock Island, and the Milwaukee?

A. I'd have to—

Q. Look at Exhibit 9.

A. That would be correct, yes.

Q. Now, that rate being east of—the destination being east of Mobridge would be covered by the second block in Exhibit 4?

A. That's correct.

Q. And you say there is such a rate although the statement in Exhibit 4 is to the effect that this station must be exclusively served by the Milwaukee?

A. The second block of that description says "also some points common with other lines generally applicable through intermediate application of rate to local point beyond." So, I do not say that there are no rates to common points in that territory.

Q. Just a moment. Your common points covered by intermediate application on Exhibit 9 are colored brown, but Mason City is not.

A. This is generally applicable. Now, there may be cases where they are named specifically, but it's the same common [fol. 1747] rate on either side of it, and so it could be named specifically without being colored in brown, if you're making that point.

Q. Well, Mason City either has a specific rate due to this

tariff in the second block, or it has a rate because of intermediate application, isn't that a fair statement?

A. That is correct.

Q. Now, if it were a rate because of intermediate application, you would have it designated on Exhibit 9 in brown, would you?

A. The intention would have been to do so.

Q. Don't you so state on Exhibit 9? "Brown indicates points on the Milwaukee in the same general direction territory to which such rates apply via Spokane on parity with other routes only by virtue of intermediate application of rates to points beyond."

Now, that's your explanation on 9. Now, if the rate to Mason City is by intermediate application, you should have it colored brown?

A. I didn't say it was by virtue of that.

Q. All right.

A. I didn't say that. What I did say was that those cases that are colored in brown are by virtue of an intermediate application, but, if Mason City is not colored, the presumption is and the intention of that exhibit is that it is named in the tariff specifically, and without the tariff in front of me, I can't say for sure, but I trust that our exhibit is correct in that respect.

[fol. 1748] Q. Is Mason City served exclusively by the Milwaukee?

A. I don't understand that it is, no, sir.

Q. Do you know what other railroads might be in there, offhand?

A. No, sir.

Q. Is Britt, Iowa, served exclusively by the Milwaukee?

A. I don't know.

Q. Britt is not colored brown or red on this map, Exhibit 9, is it, Mr. Engel?

A. I don't know.

Q. It's a point between Mason City and Spencer, if you'll refer to Exhibit 9. It's the third station out of Mason City.

A. I don't see it on the map. Is it on the map?

Q. The third station west of Mason City.

A. Oh, yes, I see it now.

Q. That's not colored in either red or brown, is it, Mr. Engel?

A. No, sir, it is not.

Q. How about Hedrick, Iowa? That's—I should know where it is. I can't find it on your Exhibit 9. So, we'll pass that for a minute. Do you know that that's a Milwaukee point, however, in Iowa?

A. I do not, no, sir.

Q. How about Perry, Iowa? That is just northwest of Des Moines on the double track.

A. The name "Perry, Iowa"?

[fol. 1749] Q. Yes, sir.

A. It's shown—I see it.

Q. That has no distinguishing color, so it's a yellow color, is it not?

A. Yes, sir, that's right.

Q. There's another point—Pickering. Is Pickering, Iowa—take that same route from Perry.

A. I see it.

Q. Is that colored yellow?

A. Yes, sir.

Q. Ruthven and Spencer, Iowa—now, they're on the Mason City line again, west thereof, where the Des Moines branch crosses going to Spirit Lake.

A. I'm sorry I can't locate it. What points are they again?

Q. Spencer and Ruthven. They're on the east and west line just south of the Dakota-Iowa border.

A. I'm sorry. Will you show them to me?

Q. I'll be pleased to. There it is. They're colored yellow, are they not?

A. Yes, sir.

Q. Waukee, Iowa. That's right out of Des Moines, right west of Des Moines, the second station.

A. I see it.

Q. Is that colored yellow?

A. Yes, sir.

[fol. 1750] Q. Des Moines is colored red?

A. That's correct.

Q. Now, as to Des Moines, you know it's just like Mason City. That's a common point with other railroads?

A. Yes, sir.

Q. Do you know what other railroads they are?

A. I couldn't mention them offhand.

Q. But, as to these other points, Waukee, Perry, Ruthven, Spencer—do you know as to whether they are or are not common points with other railroads?

A. No, sir, I do not.

Q. Under this tariff in Exhibit 4, coupled with the explanation in Exhibit 9, it is your interpretation of the existing rates that the single factor through rate via Spokane would be applicable to these points via the Milwaukee on SP&S business?

A. To those shaded in yellow, yes, sir, that's right.

Q. Including the points I just mentioned?

A. Yes, that's correct.

Q. Except Des Moines, of course?

A. Shaded in yellow, yes.

Q. Yes, shaded in yellow. Now, at the present time, the Milwaukee is also a concurring and participating carrier in a through route to these points via the Minnesota Transfer, are they not, Mr. Engel?

A. To some of them, I'm quite sure they are, but, [fol. 1751] whether to all of them, I don't know.

Q. Well, let's take Mason City. That's one that you're positive of?

A. Yes, sir, I'll agree with that, yes, sir.

Q. So that at the present time the Milwaukee has a single factor rate from SP&S business to Mason City, Iowa, over its own line, single line, and also through the transfer over the northern lines?

A. That's correct.

Q. Now, what is it that the Milwaukee wants in this proceeding as concerns Mason City, Iowa, that it does not have at the present time in the matter of rates and routes?

A. It seeks, for example, to Mason City joint through rates from the Santiam Branch via the Oregon Electric, SP&S, Spokane, Milwaukee, Minnesota Transfer, and connecting lines to Mason City, as well as via the Milwaukee single line from Spokane to Mason City.

Now, we do not have rates today from the Santiam via Spokane.

Q. Wait a moment. Just a moment. You lost me there on one of those curves. Pick me up. You said via the transfer to Mason City. Did you mean via the Milwaukee to the transfer or via the northern lines?

A. I meant, speaking specifically of the Santiam Branch where we do not have rates today to Mason City via Spokane, what we are seeking is rates from the Santiam [fol. 1752] Branch via the Oregon Electric, SP&S, Spokane, Milwaukee to Minnesota Transfer, and thence connecting lines that serve Mason City. We also want the rates from Santiam via the Oregon Electric, SP&S, Spokane and the Milwaukee direct into Mason City, or through Minnesota Transfer for diversion purposes—in other words, a general application of rates via the Milwaukee as a single line from Spokane to Mason City.

Q. Well, now, let's stop there a moment before we pick up the rest of the SP&S. So, as to the Santiam Branch, you want really alternative routes to Mason City via the transfer and then you said via direct?

A. Yes, there are many alternative routes.

Q. What would be your direct route to Mason City?

A. You mean: How would the train be operated?

Q. Well, you'd have a tariff route over which the traffic could flow under your tariff. Now, how would a car from Lebanon on the Santiam Branch, if I understand this record right, how would that move over what you term the direct route to Mason City?

A. I don't know how the trains operate. I do know that we make up through trains to Minneapolis, break them up there for the south, but, just whether that would be the route to Mason City, I couldn't say.

Q. In your statement, you used two routes. You said you want a rate and a route from the Santiam Branch via the transfer to Mason City, and you also want a route [fol. 1753] and a rate from the Santiam Branch via direct Milwaukee to Mason City.

A. And if there is—

Q. What is the direct route that you're speaking of? You must have something in mind.

A. When I say direct via the Milwaukee, I leave the actual physical handling open so far as there is no Fourth

Section departure violation. It can move into Mason City via our line through the transfer and down without violating any Fourth Section. There would be various routes on the Milwaukee into Mason City.

Q. Let's assume the Milwaukee gets sufficient Fourth Section relief so that all routes are open from Spokane to Mason City. So, what would be the Milwaukee's direct route, as compared to the transfer?

A. Well, as I say, I don't know how the trains actually operate. It would be the most economical route for our company, I'm sure.

Q. Oh, you would have a route to Mason City, would you not, without going through the transfer? Look at your Exhibit 9. Now, I mean now a physical route as to whether you would put that in your tariff if your complaint here were allowed, which is something else, but you have actually now a physical route to Mason City without going through the transfer?

A. Several of them, yes, sir, several.

Q. And what are some of them?

A. Well, for example, we could go down south from Aberdeen. We could go down through Woonsocket and [fol. 1754] Mitchell and go out east from there. We could come in to Bristol, through Andover, and down by Madison, South Dakota, and across there. We don't even have to go into the transfer on the northern route, but those routes would all be available for diversion purposes; if there was a car started out and it was, say, consigned to Woonsocket or Mitchell, they could be diverted into Mason City. Those would be available routes, yes, sir.

Q. And they would also be available routes for firm order cars, wouldn't they, to Mason City?

A. Surely.

Q. They could be. Your management could make them available, couldn't they?

A. All routes are available. I don't quite understand you.

Q. Well, no. There are some tariffs that have restricted routings over some routes because of the operating conditions, or the lack of service, maybe once a week or twice a week service, so the railroad management will channel

its traffic over a certain route, but, so far as this is concerned, you could channel your traffic to Mason City from the Santiam Branch over the transfer or these other routes you mentioned, isn't that correct?

A. I don't know how the trains are operated, but I assume that is correct.

Q. Now, let's drop to Des Moines—wait a minute—I'm ahead of myself.

[fol. 1755] A. We're talking about Mason City now?

Q. That's right. We're not through with Mason City. How about the rest of the SP&S System? What is the proposal of the Milwaukee, forgetting now we just discussed the Santiam Branch?

A. Our proposal with respect to the remainder of the SP&S, Oregon Electric, in regard to Mason City itself, is simply with the view to an additional destination territory beyond Mason City that we do not have. It would not affect at all the existing routes of other lines south of Minnesota Transfer to Mason City, nor would there be anything additional under our proposal from other points, from other than the Santiam Branch, via Spokane into Mason City.

Q. Well, when we speak of Mason City, we're speaking of all points on this Exhibit 9, which are colored in yellow. Mason City is typical as to what your explanation of the proposal is?

A. It would be representative, yes, sir.

Q. That's right. So, we don't have to mention Ruthven or Waukee or those. We can use Mason City as typical. Your proposal, as you explain it, having application to Mason City, also is relevant to these other points, that's correct, isn't it?

A. If that's a good general statement, yes.

Q. Now, you say you won't disturb the present routing of the other roads to Mason City, but you would disturb your own routing to Mason City, would you not?

A. From points other than the Santiam Branch?

[fol. 1756] Q. That's right.

A. I don't understand, sir.

Q. You now are a participating carrier with the northern lines tariff through the Twin Cities. The first place that the

Milwaukee gets that traffic is at Minnesota Transfer, isn't it?

A. Are you speaking of OE origins now?

Q. I'm speaking of those origins on the SP&S System that move over the northern lines, but with Milwaukee delivery and interchanged at Twin Cities. The first that the Milwaukee gets hold of that traffic is at Minnesota Transfer, isn't it?

A. We have the joint rates today via Spokane.

Q. That's what I'm talking about. I just wanted you to confirm it. That's what I'm talking about, is the joint rates moving from SP&S origins via one of the northern lines through the transfer to Mason City. The Milwaukee is a participating carrier in such a joint through route, aren't they?

A. Yes, sir.

Q. So that the Milwaukee could pick up a car at Minnesota Transfer, at the interchange there, and haul it to Mason City at the through rate, could it not?

A. We have joint rates via the transfer and our lines.

Q. Well, just answer. They could do that, couldn't they?

A. We have the rates. Is that an answer?

Q. Well, it's a left-handed answer. You have the rates, and, if somebody gave you the business, you'd haul it, wouldn't you?

[fol. 1757] A. Certainly.

Q. And it's presumed that you haul some of it now, I gather, is that a fair statement?

A. It's my understanding that we do.

Q. All right. Now, that kind of a route would not be disturbed by your tariff proposal here, would it?

A. No, sir.

Q. Neither the rate nor the route would be disturbed?

A. No, sir.

Q. But, if your proposal here were granted, the Milwaukee itself would have a single line rate, identical in all respects to the northern lines rate from these SP&S origins to Mason City, would it not?

A. As I stated a minute ago, we have the rates today to the territory colored yellow via Spokane. We also have the rates via Minnesota Transfer except from the Santiam

Branch via the Spokane route. Now, I've answered it before, and I don't know just exactly—

Q. Well, do you mean to say that your present rates from the rest of the SP&S System, exclusive of the Santiam Branch, that you presently have, are as broad as the proposal under the present complaint?

A. No. I explained that what we wanted was additional destination territory, but, as far as Mason City is concerned, we're not disturbing that application via Minnesota [fol. 1758] Transfer and connecting lines, nor our own route, at all. All we're seeking is additional territory beyond, but, as far as Mason City is concerned, it wouldn't disturb that at all.

Q. How about existing privileges of a shipper and the consignee?

A. Well, you speak of transit privileges, diversion privileges?

Q. Yes, sir.

A. Well, it would provide additional diversion privileges because they go with the through rates which we are seeking.

Q. That's exactly then what you're doing there. At the present time, you have a joint rate with two carriers, at least two carriers involved, from Spokane to Mason City under which the consignors or the owner of the shipment have certain diversion and reconsignment privileges, do you not?

A. Correct.

Q. Now, you want under this proposal the identical tariff as that one for single line application on the Milwaukee, isn't that correct, which you don't have at the present time, single line rate?

A. We've got a line south of the transfer, and all we are seeking is routing to the transfer to those eastern gateways, and we are accepting for our haul beyond the transfer the same status—or for our line beyond the transfer the same status as either of the Western Trunk lines. Now, it would hardly be realistic for us to say, "Give us rates to the trans- [fol. 1759] fer, and we don't want the rates south of the transfer." If that's what you're asking me, I say that we certainly do want the single line route from Spokane to

Mason City via the transfer and via these other routes. We certainly do want that.

Q. That's right, and you don't intend to surrender any of your existing routes? You would still have the route through the transfer in connection with the northern lines? That's so, isn't it?

A. We expect—

Q. Isn't that so?

A. Expect to surrender any?

Q. You don't expect to surrender that route? You'd still continue that participation?

A. We don't expect to surrender. We want to expand on it.

Q. Right. So that, if this application were granted, the Milwaukee would have some additional advantages as a carrier on goods destined to Mason City that it does not have at the present time, would it not?

A. The advantage we'd have would be to secure traffic at Spokane, Washington, and haul it to Minnesota Transfer. Definitely, that would be an advantage, a new advantage, on traffic that moves to territory that we cannot reach by that route today.

Q. Now, let's drop to Des Moines.

A. Did you say drop to Des Moines?

Q. Drop to Des Moines, Des Moines being southerly of [fol. 1760] Mason City, Des Moines is also on the Milwaukee line. As I understand it, at the present time, it does not have any lumber rates. It's excluded from the territory east of Mobridge, is that correct?

A. Via Spokane, that is correct.

Q. Yes. At the present time, the only way the Milwaukee can haul any lumber off the SP&S to Des Moines and the shipper enjoy the through rate is via the Minnesota Transfer, or is there another gateway open to the Milwaukee in connection with the northern lines?

A. No; I believe that's the only one, via Minnesota Transfer.

Q. Now, I'm excluding Union Pacific and all of them. I'm speaking of only the northern lines.

A. That is correct. That is my understanding.

Q. So then, as to business to Des Moines, the Milwaukee

from the transfer is presently in competition with other Western Trunk Line carriers who also operate from the transfer to Des Moines on SP&S business via the GN or NP?

A. Yes, sir.

Q. Now, your proposal presently being heard as to Des Moines would cut off all the restrictions presently obtaining at that station on its business, would it not, if that petition were granted?

A. I don't understand your question.

Q. Well, you have a restriction now against Des Moines. You have no lumber rates into Des Moines via your own [fol. 1761] single railroad?

A. Our complaint seeks joint rates via Spokane to Des Moines, yes, sir.

Q. Yes, but a single line haul from Spokane to Des Moines?

A. Yes, sir.

Mr. Maguire: That's what he said, Mr. Musenbrock.

The Witness: That's correct.

By Mr. Musenbrock:

Q. At the present time, you don't enjoy any such rates?

A. No, sir; that's correct.

Q. Now, you made a statement in connection with Mason City that you sought a rate from the Santiam Branch to Mason City via the Twin Cities and also via Milwaukee direct. Having that in mind, will you state what you propose as to Des Moines under this present complaint?

A. It would be the same. We propose to establish these rates via Spokane and the Milwaukee to Minnesota Transfer, thence other lines, as well as via our own line direct, so that, for example, if the M&StL reached Des Moines, Iowa, we would have the rates via Minneapolis and the M&StL to Des Moines, Iowa, as well as our own line into Des Moines, Iowa.

Q. And you would continue the present setup via your own line in connection with the NP and GN also?

A. Yes, sir.

Q. You wouldn't surrender that?

[fol. 1762] A. Yes, sir, that's correct.

Q. Would there be any other routes available under your proposal here from Spokane to Des Moines, other than the Twin Cities gateway?

A. You mean: Could we handle it from the transfer by ourselves, for example, through Sioux City to Des Moines?

Q. That's right.

A. Certainly. That would be available.

Q. That would be available for a shipper out here or a consignee if they did the routing? It would be available?

A. Surely.

Q. Under your tariff?

A. Surely.

Exam. Dishman: Mr. Musenbrock, is that a good place to stop?

Mr. Musenbrock: Yes.

Exam. Dishman: We will recess for lunch until 2:00 p.m.

(Whereupon, at 12:25 p.m., a recess was taken until 2:00 p.m.)

[fol. 1763] AFTERNOON SESSION 2:00 p.m.

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Maguire: Mr. Examiner, all of Counsel have agreed that Mr. Engel may step down from the stand for the time being, his cross examination to be resumed after the completion of the cross examination of Mr. Selby and also of Mr. Ruddick, who was to be here at 3 o'clock, and who is now available at this time, and I understand that it is satisfactory with all the parties that these two gentlemen go on ahead of Mr. Engel.

Exam. Dishman: All right. Then let the record show that Mr. Engel is excused temporarily.

(Witness excused temporarily.)

Exam. Dishman: Do you want to go ahead?

Mr. Maguire: I think Mr. Selby has been suggested to be next, and he is now available.

Exam. Dishman: All right.

DENNIS O. SELBY having been previously sworn, was again recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Selby, you handed me this morning a file of bills of lading on cars shipped by your company from the point of Menominee, Michigan, to various destinations in the western part of the United States, on which there were stopovers en route, and, as you pointed out to me, in- [fol. 1764] advertently, there was one bill of lading which was included, on which there was no stopover en route.

Will you tell me please again: What was the basis for your selection of the bills of lading which you handed to me?

A. They were all of the bills of lading that were immediately available to me in the file. I brought them because I thought they might be of some value.

Q. From Menominee, Michigan?

A. That's right.

Mr. Maguire: Just a moment, Mr. Rockwood. This is not an objection, but I think the record should be clarified on that. I believe the witness may have misunderstood. Those are not all of the bills of lading he could find. Those are all of the bills of lading that were stops for partial unloading.

Mr. Rockwood: So I understand.

Mr. Maguire: I just wanted that clear.

By Mr. Rockwood:

Q. But, so far as you know, they are all the bills of lading covering shipments from Menominee, Michigan, in the period covered by the bills of lading on which there were stops en route for partial unloading?

A. No, that is not all of them. I said, I'm sure, that that's all that were in the file. I know there were others, but I don't know how many.

Q. Can you tell us whether—would you be willing to

assert that these are fairly representative of the business [fol. 1765] done by your company?

A. Yes; that is, in the Northwest. That does not include our California business.

Q. So I understand. A pencil statement was prepared by one of my associates, after those bills of lading were handed over to us, and that pencil statement was made available to you and some assistant working with you to check. Did you check that exhibit?

A. We did.

Q. And I have it here in my hand and there are some certain notations in pen and ink on this statement, and with the exception of the pen and ink notations, did you find that tabulation, which our side prepared, to be correct?

A. We did, except we didn't know what the significance of the X's might have.

Q. Well, you're referring now to an X opposite the shipment on July 30, 1954, and an X in the next to the last column opposite a shipment on June 30, 1954—that's July 30, '54, and June 30, '54, and another X on the same shipment of July 30, '54. That's what you're referring to?

A. This one also.

Q. Oh, yes. There's an X on the shipment under date of August 20, 1954.

A. Yes.

Mr. Rockwood: May I have this marked for identification [fol. 1766] as an exhibit?

Exam. Dishman: That will be identified as Exhibit No. 26. Is that to be—

Mr. Rockwood: It's offered as part of cross examination. I think it may be designated as an exhibit of the defendants, and I will undertake, if I may withdraw this pencil statement, to have the exhibit reproduced, either photostatically or some other way, in order that others may be supplied with copies for the record and that I may have a copy of it for my own future use.

Exam. Dishman: When can you do that? Before the hearing is over?

Mr. Rockwood: Well, if photostatic copies are satisfactory, it can be done rather hurriedly.

Mr. Maguire: I would have no objection to receiving a photostatic copy of it. I'd like to look at the exhibit. I haven't seen it myself.

Mr. Rockwood: Surely.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Maguire: Are you going to reproduce on that these X marks that Mr. Selby referred to?

Mr. Rockwood: I was going to make photostats.

Mr. Maguire: I presume that, when this exhibit is [fol. 1767] formally offered, that there will be some explanation of these extracurricular remarks.

Mr. Rockwood: Those extracurricular remarks were put in because my assistants thought that those particular cars would be of interest to me, and that's the only significance they have.

Exam. Dishman: Very well, that may be marked as Defendant's Exhibit No. 26.

(Defendant's Exhibit No. 26, Witness Selby, was marked for identification.)

By Mr. Rockwood:

Q. Mr. Selby, in pen and ink on the shipment on May 22nd, 1953, the final destination was Eugene, Oregon, the first stop Seattle. There is a pen and ink notation. The second stop in pencil is designated as Tacoma, Washington. What is that pen and ink notation?

A. My interpretation of the bill of lading, it said Fort Steilacoom via Tacoma.

Q. Do you know where Fort Steilacoom is?

A. It's near Tacoma.

Mr. Rockwood: Maybe Mr. Engel could tell us. Is Fort Steilacoom a station within the Tacoma switching limits?

Mr. Engel: No, sir, it isn't.

Mr. Maguire: Maybe we can look at the original bill there. You still have those, haven't you, Mr. Rockwood?

Mr. Rockwood: I handed them back to Mr. Selby.

[fol. 1768] Mr. Maguire: I thought maybe we could fix that up here.

Mr. Rockwood: What railroad it is on is what I would like to know.

The Witness: This bill of lading has been made out wrong, but it says Fort Steilacoom, Washington, via Tacoma. Of course, that was made up at the office of the railroad company. It's possible that they could have made it wrong.

Mr. Rockwood: Is Fort Steilacoom on the Northern Pacific?

Mr. Engel: There's a Steilacoom south of Tacoma.

Mr. Rockwood: How is that spelled?

Mr. Engel: S-t-e-i-l-a-c-o-o-m.

Mr. Rockwood: That's a station on the Northern Pacific south of Tacoma, is that correct?

Mr. Engel: I think it's on other lines as well.

Mr. Rockwood: This car moved Northern Pacific to Portland. I take it the stopover point of Steilacoom was a stopover at a station on the Northern Pacific.

By Mr. Rockwood:

Q. If you will run down this first column of final destinations, I call your attention to Eugene, Oregon, as the destination on May 22, 1953. That is the one we were just speaking about. That is a point on the SP and the Oregon Electric, is it not?

A. I believe it is.

Q. It was actually delivered—that carload was finally delivered by the Southern Pacific. That's correct, is it?

[fol. 1769] A. That's correct.

Q. Eugene being a common point with the Oregon Electric and the Southern Pacific. Coming down to here, there's a shipment on June 30, 1954, with Eugene as the final destination. That is also, as we have said, on the Southern Pacific, and, in that case, the delivery was made, according to the bill of lading, SP&S, and then there's a notation apparently of something not appearing on the bill of lading that that must have been an Oregon Electric delivery.

Was that an Oregon Electric delivery at Eugene?

A. I could not say.

Q. Well, in any event, the SP&S, being shown as the delivering carrier, and Eugene is a common point with the Southern Pacific, you would infer that it must have been delivered by the Oregon Electric?

A. We'd infer that, yes.

Q. Here's one on August 20th, 1954, with Albany, which likewise shows SP&S delivery. Albany is also one of those points on the Southern Pacific and on the Oregon Electric in the Willamette Valley, is that not true?

A. Yes, I believe it's true.

Q. I skipped over one that I wanted to mention. On July 30, 1954, there's one shown with Rainier as the destination, which was stopped over at Seattle, and moved Milwaukee, Great Northern, SP&S. Rainier is a local station on the [fol. 1770] SP&S, served by no other railroad. That's correct, is it not?

A. That's correct.

Q. That's on the lower Columbia River on the line west of Portland between Portland and Astoria?

A. That's right.

Q. Well, now, with the exception of the destinations that I pointed to, of which only one was a local point on the SP&S System, there were no destinations covered by those shipments, those bills of lading, for which the SP&S was the sole carrier which could have been used for delivery except this one at Rainier, if you run down that first column?

A. I believe that is correct.

Q. Now, coming to the second column, which is headed "1st Stop" and running down through, here again on June 19, 1953, we find Eugene, but the routing on that car did not involve the SP&S, did it? It was an SP delivery, was it not? Oh, I guess the SP&S did participate.

A. The SP&S participated.

Q. But where you don't know?

A. Well, from Minnesota Transfer—no—from Spokane, I would presume.

Q. But Eugene—at Eugene, the Southern Pacific was the delivering carrier?

A. That's correct.

Q. Coming down through, you can find no other stations [fol. 1771] on the SP&S System, including the Oregon Electric and the Oregon Trunk or the main line, at which stops were made on any of those cars. That's correct, is it not?

A. I believe it's correct.

Q. Coming to the third column, marked "2nd Stop", Portland, Oregon, of course, is served by the SP&S, but it's also served, as you know, by the Northern Pacific, Great Northern, Union Pacific, and Southern Pacific, and that particular car was routed Milwaukee, Northern Pacific, with the final destination Seattle, with a stop at Portland and a stop—first stop at Spokane, second stop at Portland. There is no indication on there that the SP&S handled that car at all, is there? It's routed Milwaukee, Northern Pacific?

A. No—yes.

Q. Oh, yes, I believe so.

A. That's right.

Q. Those are my ditto marks.

A. Yes.

Q. They may have handled it without the bill of lading?

A. It's possible.

Q. Now, coming on down through, we find a shipment on January 12, 1954, which went to Coos Bay, Oregon, was stopped at Hoquiam, Washington, the first stop, and Albany, Oregon, the second stop. That is a point on the Oregon Electric, but it was handled by the Southern Pacific apparently south of Portland, is that correct?

[fol. 1772] A. That's correct.

Q. So that the SP&S did not participate in that movement. Now, dropping down again, we find Albany, Oregon, on a shipment of June 30, 1954. That shipment moved via the Milwaukee and Great Northern and the SP&S, with the first stop at Mead, Washington. That's on the Great Northern, is it not?

A. Correct.

Q. And it stopped then at Albany, Oregon, which is on the Oregon Electric, and was finally delivered at Eugene on the Oregon Electric. That's correct, is it not?

A. I don't know. This bill of lading says SP&S, but how it traveled from—it apparently went on the Oregon Electric from Portland, or wherever the Oregon Electric starts in.

Q. It starts at Portland, and there is no SP&S line as such south of Portland. I think Mr. Maguire will agree and accept the Oregon Electric.

Mr. Maguire: That's right.

By Mr. Rockwood:

Q. So that, with the exception of those which I have called your attention to in the column headed "2nd Stop", there were no cars that stopped at SP&S stations, is that correct, including the Oregon Electric?

A. Well, what about Albany and Eugene.

Q. Well, I think I called your attention to them. In the 2nd stop, the only SP&S points are Albany—two for [fol. 1773] Albany, but there's no Eugene in that.

A. That's right.

Mr. Maguire: Doesn't the exhibit speak for itself on that? I think it does, Mr. Examiner. I don't care to have this witness bound or to be bound by hasty examination of that. I think that certain matters have been called to his attention by Mr. Rockwood, but the exhibit really is self-explanatory.

Exam. Dishman: Well, all of that data is on the exhibit?

Mr. Rockwood: That's right.

Mr. Maguire: So, where the exhibit conflicts with anything the witness may say at this time, due to his hasty examination of that list, I think the exhibit should be understood to prevail.

Mr. Rockwood: That's correct, but I wanted Mr. Selby to have a general picture of the contents of the exhibit, particularly with respect to the things as to which I was interested.

Mr. Maguire: I'm not objecting to that at all, Mr. Rockwood.

By Mr. Rockwood:

Q. Is that material in that exhibit a fair representation of all your companies in the Pacific Northwest that handle shipments that were part unloaded en route?

A. I think it's a fair representation. As I said before, it is not complete.

Q. I understand that. It illustrates, does it not, the general practice that you have in your business of routing cars, how in lining up the contents of particular cars, start-
[fol. 1774] ing out of a manufacturer's plant in the east, in this case Menominee, for distribution through the west so that you will be able to get the benefit of a through rate through to the final destination of the car?

A. That is correct.

Q. And every one of those bills of lading, as summarized in this exhibit, does show a movement over a route, over which single factor rates apply from Menominee, Michigan, to the final destination?

A. That's my understanding of it.

Q. If you have a shipment on a particular day moving to a destination, a particular destination, and on that same day have another shipment moving to another destination, and the through rate, the single factor rate from Menominee would not apply with the stopover at the destination at which you wished to part unload and through to the destination at which you wished to unload the second shipment, you would not start those two loads out in that same car, would you?

A. No.

Q. And your business, I take it, involves shipments of cars with what I'll characterize as some frequency—it doesn't mean that one is moving every day out of Menominee, but—well, you take any month down in through and you'll find two or three part unload cars in each one of those months, that's correct, isn't it?

[fol. 1775] A. We average at least that many.

Q. So that, if the two shipments that you have in mind on a particular day don't match up to give you a through rate, you would normally hold up one of them until you

were getting a load a little bit later that month which would match up, isn't that correct?

A. We probably would have to.

OFFER IN EVIDENCE

Mr. Rockwood: I offer this Exhibit No. 26 in evidence as part of cross examination.

Mr. Maguire: No objection.

Exam. Dishman: It is received in evidence.

(Defendant's Exhibit No. 26, Witness Selby, was received in evidence.)

Mr. Rockwood: Those are the only questions I have of Mr. Selby.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Torinus: I have no questions.

By Mr. Golden:

Q. Mr. Selby, are you the sole distributor for Heywood Wakefield?

A. We are sole distributors for Heywood Wakefield on theatre chairs and school furniture in the Northwest and most of California.

Q. They wouldn't sell anything to me then?

[fol. 1776] A. No.

Q. Do you always buy in carload quantities?

A. No. Whenever possible, we do. We have many l.c.l. shipments of small orders, but they're not possible to combine in carload lots.

Q. You have less than carload shipments with some frequency?

A. Yes, we do. Quite frequently we have l.c.l. shipments.

Q. On the carload shipments, do you indicate the routing, or does Heywood Wakefield do that?

A. The Heywood Wakefield Company Traffic Department does the routing with our O.K. They will accumulate two or three orders for shipment, or whatever is necessary to

fill a car. They will wire us or write us, and we will O.K. the shipment or offer further suggestions as to re-routing, but we usually abide by their decision, unless it was some rush shipment and we needed to change it, or something like that.

Mr. Golden: That's all I have.

By Mr. James:

Q. Mr. Selby, in your original direct some months ago, you mentioned that a point at which your company does buy some material was Waco, Texas. As I understood from talking with you, that traffic consists of folding chairs in carloads, is that correct?

A. That is carloads, also l.c.l. shipments, but most of it is carloads.

Q. And as I understand it, that movement would not be [fol. 1777] affected by the outcome of this case, is that correct? They move to Portland?

A. The movement from there on that particular commodity up to now at least has always been directly to our Seattle or Portland, San Francisco, or Los Angeles warehouses, and the stopover privilege is no problem.

Mr. James: That's all.

Mr. Hillman: I would like to recapture that Exhibit 26 from Mr. Maguire.

Mr. Maguire: Surely.

By Mr. Hillman:

Q. Mr. Selby, I believe that there are about 36 shipments covered by this Exhibit 26. Is that your understanding?

A. I didn't count them.

Mr. Hillman: If the Examiner will give me leave, I'll count them.

Exam. Dishman: All right.

Mr. Hillman: Thirty-six is correct.

Mr. Maguire: If your count is correct, we'll concede it.

By Mr. Hillman:

Q. And I note that, of these 36 shipments, Mr. Selby, the Chicago and North Western was the carrier between Menominee and Minnesota Transfer on only five as I count them hastily. Now, you've stated that these shipments are all with respect to traffic which was stopped for partial unloading.

Is there anything in the nature of this particular type of [fol. 1778] traffic which is different from traffic not involving partial unloading, which might affect the movement of the traffic between Menominee and Minnesota Transfer?

A. There's nothing—I don't quite get your statement. I'm not clear on it, I'm sorry.

Q. The only point I'm trying to make is whether the traffic represented by this Exhibit 26, which is traffic which is stopped for partial unloading, is there anything different in the nature of this kind of shipment from the ordinary shipments which are not so stopped for partial unloading, which might affect the routing practice between Menominee and Minnesota Transfer?

A. No.

Q. So that, to the extent this is typical or represents a typical pattern for this type of traffic, it would apply to all of your traffic?

A. That's correct.

Q. You indicated that Heywood Wakefield provides routing directions in the first instance, subject to your approval?

A. That's correct.

Q. Do you ever exercise your authority with respect to routing as to the movement between Menominee and Minnesota Transfer, or do you accept Heywood Wakefield's directions on that?

A. I don't recall any particular correspondence or conversation regarding that.

Q. You don't recall ever having suggested a different [fol. 1779] routing between Menominee and Minnesota Transfer, other than that which was originally suggested by Heywood Wakefield?

A. I don't recall it.

Q. Can you tell me if you handle shipments which are delivered to points located on the lines of the Chicago, Milwaukee in Montana, or Washington, or Idaho, on which the Chicago, Milwaukee is the delivering carrier?

A. What was that again? I don't think I understood it.

Q. Do you handle any of these shipments, or do you put orders in for any of these shipments which might be handled by the Chicago, Milwaukee as the delivering carrier, and I assume that might be in Washington or Montana?

A. As the delivering carrier, sure.

Q. Can you state whether there is any difference in the routing of such traffic between Menominee and Minnesota Transfer on traffic which the Chicago, Milwaukee handles out of Minnesota Transfer as delivering carrier, as between that type of traffic and traffic which is handled by the Northern Pacific or Great Northern out of Minnesota Transfer?

Is the Milwaukee more likely to get any shipment on which it is the delivering carrier out of Minnesota Transfer by virtue of the fact that they are providing a single line haul?

A. Out of Menominee?

Q. Correct.

A. I don't know. I can't answer that.

[fol. 1780] Q. That's a fair enough statement, Mr. Selby, and I won't pursue it any further.

A. I can't give you any answer to that.

Mr. Hillman: No further questions.

Mr. Boe: I have none.

Exam. Dishman: Any more cross examination?

(No response.)

Mr. Maguire: I have a few.

Redirect examination.

By Mr. Maguire:

Q. Mr. Selby, where you do not have a full carload made up of part shipments, that is, shipments for more than one destination or customer which can be combined under a through rate, do you at any time utilize the carload rate

by filling up the car with merchandise for your Seattle warehouse?

Mr. Rockwood: He so testified on his direct examination. It's repetition.

Mr. Maguire: I want to bring that out because you were asking the same questions yourself on this, very much the same. I just wanted to put it together.

Mr. Rockwood: Objected to as repetition.

Exam. Dishman: The witness may answer.

The Witness: We do that very frequently, yes.

By Mr. Maguire:

Q. Now, as to this question which was asked here by Mr. Rockwood, as to whether this sheet, which has been marked for identification as Exhibit No. 26, as to whether that is a [fol. 1781] fair cross-section of your manner of doing business in this territory, I wish you would elaborate a little bit more on that. Is that a fair cross-section of the business that you did during the period covered by this exhibit, or is it a fair cross-section of the business you do year in and year out? In other words, is there a change from time to time in the pattern of your distribution, the details of the pattern?

A. I would say that was a fair cross-section for the time covered. Our business changes every day. When you sell schools furniture, they don't buy any more for 10 years. Next week your customer is someone else.

Mr. Maguire: Can I have just a moment to look at this, Mr. Examiner?

Exam. Dishman: Yes.

By Mr. Maguire:

Q. Were all of these movements, shown on Exhibit 26 for identification, movements under joint through rates which would allow partial unloading in transit?

A. My understanding is they were.

Q. Under the then existing through rates?

A. Yes.

Mr. Maguire: That's all I have. I am now returning this to you, Mr. Rockwood.

Mr. Rockwood: I'll look at it once more. I don't think I have any question on it—oh, I have one more.

Recross examination.

[fol. 1782] By Mr. Rockwood:

Q. On this Exhibit 26, Mr. Selby, of the total cars shown there, Seattle is shown as the final destination of some 10 of them, isn't it, approximately? Can you check that?

Mr. Maguire: Unless this is a preliminary question, I submit the exhibit speaks for itself.

Mr. Rockwood: Yes. I just want to call his attention to those particular shipments and ask him a question about it.

The Witness: Ten is right.

By Mr. Rockwood:

Q. Are those cars all in the category that you described with stops to unload—part unload at one point with final destination your warehouse in Seattle, some of them?

A. These final destination Seattle, all of them made one or more stops.

Q. Yes.

A. With the final destination Seattle warehouse.

Q. Then in that respect, the exhibit is consistent with your general testimony that you may start cars out to part unload en route, final unloading for holding in your warehouse at Seattle?

A. I can't say that these were all for our warehouse holding. Some of them could have been for Seattle delivery, but part of them no doubt were warehouse stock.

Q. The exhibit is, again, a fair cross-section of your business which was done during the period beginning August 12th, 1952, the earliest date on the exhibit, down to October 11, 1954, the latest date on the exhibit?

[fol. 1783] A. I think so.

Mr. Rockwood: That's all.

Redirect examination.

By Mr. Maguire:

Q. That's a fair cross-section of the business done during that period?

A. Yes.

Mr. Rockwood: That's what I said.

Mr. Maguire: I just wanted to be sure.

Mr. Rockwood: A period of some two and a half years.

Mr. Maguire: Yes.

Exam. Dishman: Is that all, Mr. Rockwood?

Mr. Rockwood: That's all I have.

Mr. Maguire: If I could have just a moment, please, Mr. Examiner.

By Mr. Maguire:

Q. Now, I'd like to call your attention, Mr. Selby, to the bill—

Mr. Rockwood: Do you mind if I look over your shoulder?

Mr. Maguire: No; glad to have you do it.

By Mr. Maguire:

Q. Showing you a shipment from Menominee, Michigan, September 2nd, 1953, the final destination Seattle, Washington, did that, would you say from looking at that, go into your warehouse at Seattle? That's September 2nd, 1953, showing final destination Seattle, where it's consigned to you at Seattle with these stops here, with no direction as to [fol. 1784] delivery in Seattle. Would that be to your warehouse?

A. I would be unable to say from this information whether that was for a definite order, or whether it was for our warehouse.

Q. It could be a regular order for delivery by you at Seattle by other means?

A. That's right.

Q. And then I wish to address your attention to bill of lading which is dated October 20th, 1953, showing final

destination Seattle. I notice that the second stopoff is Long Beach, California, notify B. F. Shearer Company, 1964 South Vermont Avenue, Los Angeles 7, of car arrival.

Could you tell from looking at that, would that be for your Los Angeles warehouse, or whether it would be for further instructions by you as to delivery to a customer?

A. That would be for delivery to a customer because we have no warehouse at Long Beach.

Mr. Maguire: I see. That explains those two, and that is all I have. Thank you.

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Maguire: Mr. E. W. Ruddick is now available for cross examination. His direct testimony at the June hearing commences on Page 283 of the transcript.

E. W. Ruddick having been previously sworn, was recalled for further cross examination and testified as fol- [fol. 1785] lows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Ruddick, I show you two pages, which are 8 and 9 of Exhibit 17, which was made a part of the record in this case at the Chicago hearing. Have you ever seen copies of those pages?

A. No, sir.

Q. Will you please go down through and check to see the nature of the information which is requested in those two pages? Are the records of your company, the Pacific Mutual Door Company, such that that material could be compiled and supplied at this time? I mean, do the records exist?

A. We would not supply that information.

Q. That wasn't quite the question. Do you have the records from which it could be prepared? I haven't asked you whether you would or not.

A. If we had people to sit down and go through and pull

our records apart, undoubtedly such information could be accumulated.

Q. Do you have any idea how long that would take?

A. I wouldn't do any guessing.

Q. Are you willing to do that?

A. We are not.

Mr. Rockwood: That's all I have.

Mr. Maguire: You mean to say you called Mr. Ruddick back here for that question? Is that all?

[fol. 1786] Mr. Rockwood: Why, yes. In Chicago, I said I wouldn't have called him at all if this data had been supplied.

Exam. Dishman: Are there any other questions?

Mr. Boe: Yes, I have some questions.

Exam. Dishman: All right, proceed.

By Mr. Boe:

Q. Mr. Ruddick, when you testified in June of 1954, you were asked in your direct examination this question, Page 284 of the transcript:

"In general, you are what is known as a lumber wholesaler, is that correct?"

That was the question asked, and your answer was this:

"Not quite, inasmuch as we operate under contract certain manufacturing facilities, and we also have five jobbers, distribution warehouses in St. Paul, Chicago, Kansas City, Baltimore and Elizabeth, New Jersey."

Will you state for the record at this time whether or not that still represents the points at which you have certain contract manufacturing facilities? Are they the same at this time, or are there more or less of them?

A. Substantially the same.

Q. If there's a difference—you say substantially. I mentioned specific points. Are any of the points named, which you named last June, not in operation at the present time?

A. No.

Q. I don't quite understand that. Am I to take that as—

[fol. 1787] A. I understood your question to be: Are there any points, which I mentioned last June, no longer operating?

Q. Yes.
A. My answer was: No.
Q. They are no longer operating?
A. They're operating, yes.
Q. That's the point.

Mr. Maguire: They're not no longer operating.
Mr. Boe: That's what I'm trying to develop.

By Mr. Boe

Q. They're still operating?
A. That's right.
Q. Are there additional points, Mr. Ruddick?
A. We have no additional warehouses.
Q. Now, the next question, with respect to specific points you mentioned, can you state the areas that those warehouses serve? For instance, St. Paul?
A. St. Paul serves practically all of the state of Minnesota, and into the northern part of Wisconsin.
Q. The next point you named was Chicago.
A. Chicago serves an area south of Chicago and west of Chicago, northward into Milwaukee and up into Michigan to about Benton Harbor.
Q. How far west of Chicago does the Chicago branch serve?
A. Approximately 125 miles.
Q. Did I understand you to say it also serves south of Chicago?
[fol. 1788] A. South of Chicago, yes.
Q. How far south?
A. As far as Springfield.
Q. And with respect to Kansas City, what is the area served?
A. A radius of approximately a hundred miles.
Q. Baltimore. You refer to Baltimore, Maryland, I take it. That's true, isn't it?
A. Yes.
Q. How do you supply that branch house? Is that through St. Paul-Minneapolis, or Minnesota Transfer gateway, or is that through Omaha and Council Bluffs?
A. It could be both ways.
Q. Well, it could be. Can you state for the record how it is done?

A. No, I cannot because the type of business which we are in is such that we cannot tell where the next shipment is going to originate, what it's going to call for, or, for that matter, the destination in particular. Our business is not constant.

We oftentimes sell and then have to go out and buy the material. Therefore, it makes it quite impossible to tell in advance where the material will originate and how it will be shipped.

Q. Can you state that most of it moves through the Minnesota gateway, or does it move through the Omaha-Council Bluffs gateway?

[fol. 1789] A. Well, we couldn't put any finger on it because the majority of the movement is—in fact, we even ship from Baltimore down to Memphis, Jackson, Mississippi. We do a national business—

Q. I understand that.

A. —so it's pretty hard to tell.

Q. With respect to this western territory, on shipments that move to Baltimore, I wondered whether they moved through the Minnesota Transfer gateway, if they did, or whether they moved through the Council Bluffs-Omaha gateway. As I understand it, your answers are you can't say the volume that moves through either gateway, is that right?

A. No, I can't.

Q. Would that be the same as far as Elizabeth, New Jersey, is concerned?

A. Primarily the same. We do about the same amount of business there, although the Elizabeth business isn't quite as much.

Q. Now, with respect to volume, I understand that you do a nice business, as you indicated from what you said here. Can you say whether the greater volume of your business is done east of Chicago, or is it done west of Chicago?

A. I'd say it's pretty well split up.

Q. You mean by that—

A. If you're speaking in terms of dollars.

Q. No. I'm talking about volume, percentage-wise.

A. Volume. Is that in terms of dollars or in terms of tons?

[fol. 1790] Q. Well, let's take it in terms of tonnage.

A. It would be about equal in volume, although much greater east in dollars.

Q. Now, with respect to the volume that is handled west of the Mississippi River, can you state what proportion of that is disposed of in the area west of the Mississippi River and east of a line that we'll draw north and south through Omaha, Nebraska, and that which is west of Omaha, Nebraska?

A. We do more business east of Omaha than we do west of Omaha.

Q. In the area that is between the Mississippi River and Omaha, how is that supplied? Is that supplied through Minnesota Transfer or through the Omaha gateway?

A. It would come from any place on the coast. It would go through any gateway.

Exam. Dishman: Were there any further questions?

Mr. Boe: I have a further question, if Your Honor please.

By Mr. Boe:

Q. If this petition should be granted, what is your understanding that you will have additional, so far as the territory between the Mississippi River and Omaha is concerned, that you do not now have?

A. Restate your question.

Mr. Boe: Will you read it, please?

(Question read.)

The Witness: We'd probably have a little more assurance of being able to carry on some of our transit business, [fol. 1791] some of our wholesale business, which, of course, you all realize, is always open to the pitfalls of a canceled car, a rejected car, in certain areas in which we now enjoy some good business.

It would open up perhaps some of our stopover partial business.

By Mr. Boe:

Q. Is that also the reason that you're supporting this application with respect to the territory east of Chicago?

A. We're interested in anything, whether it be this case or any other case, in which the west coast wholesaler does not have to face any restrictions as to transit cars to certain destinations, any restrictions on cancelations or rejected cars as to where we can move them, or what we can do with them.

Q. Can you cite an example of what you have in mind there? You're talking rather broadly. I just don't follow specifically what you have in mind.

A. In the lumber business, our particular phase of it, about 50 per cent of our business, we don't know where the car is going when it starts out, and in many cases, in our normal business, we find ourselves with a car at a certain destination wherein a re-inspection may be called for and the car does not come up to grade, and we're told to move the car.

We would like to be in a position to be able to move that car wherever we may be fortunate enough to enjoy a customer.

The other phase of our business is on firm order business through certain warehouses whereby at certain stopovers [fol. 1792] certain mixtures of different types of lumber and lumber products could be put together in a car in such a way as to aid and abet the warehousing activities that we have, plus doing some l.c.l. business with some of our dealer customers.

Q. Can you name any specific points, so far as the points you have referred to in your direct testimony last June, that are under limitations at the present time?

A. One of our key points is Chicago. We do a good deal of business through Chicago, quite a good deal in Wisconsin. We would like to be able to get certain movements to our Chicago warehouse. We would like to be able to get into certain areas in Wisconsin at which is the problem of what to do with a canceled car, or the restrictions that we may find on certain stopover cars between our Chicago

warehouse and Wisconsin customers, or between certain customers in the Dakotas and in Wisconsin.

Much of the material we ship is on the order of Pittsburgh plus type of pricing as far as our price is concerned; at destination, it's a delivered price; whether it goes to New York or whether it goes to Fond du Lac, Wisconsin, the price will remain the same.

Q. Well, now, let's take Chicago. You referred specifically to Chicago which is served by many of the lines that are represented on both sides of the table here today. Now, what is that you cannot do today at Chicago that you think [fol. 1793] you will be able to do if this petition should be granted?

A. Well, I am told by people in our office—we don't have a Traffic Manager as such, but we keep hearing about restrictions, we can't do this, and we can't do that, and—

Q. Well, can you be specific about—

Mr. Maguire: Let him finish his answer, Mr. Boe.

Mr. Boe: All right.

The Witness: Our entire feeling on the question is that we would like to see everything opened up, regardless of where the destination is, permitting stopovers for completion of loading, permitting stopovers for partial unloading.

Our people selling throughout Wisconsin oftentimes find that they have customers that are interested in two different types of commodities, not sufficient to make a full car, but which we are able to put together through various mill connections that we have out here on the west coast. Where those combinations might fit, it's hard for us to tell in advance.

Much of our business, as you understand, if you understand the lumber business at all, is on the basis that you sell and then you buy. We buy it wherever we can get it at a price necessary where you make a profit on it, and you buy it wherever you can get the particular commodities that you have committed yourself for on your order to your customers.

By Mr. Boe:

Q. Well, may we confine the questions at the moment to Chicago? What specifically do you have in mind with re- [fol. 1794] spect to Chicago, which you would be able to do if this petition should be granted, that you're not able to do at the present time?

A. When I speak of Chicago, I'm speaking of our activities there, not only at the warehouse, but the activities we have with the salesmen taking out of there and covering certain parts of the Wisconsin area.

Q. And what is it that you think these salesmen can do under this proposed proposal in this complaint that they are not now able to do?

A. It's my understanding there is in Wisconsin and west of Wisconsin whereby certain shipments—certain routings are such that we can only put the car into a point local to the Milwaukee Railroad, and to move it from there on, it places some restriction on our sales pattern, plus a restriction on anything where we might have a rejected car.

Q. Where did this theoretical car originate that you're having trouble with?

A. I can't tell you where the particular car would originate. We originate throughout Oregon. We sell all the way from B.C. as far as—well, south as far as Sacramento and—

Q. Well, do—pardon me.

A. We do not represent a specific mill, selling a specific product to a specific group of customers. In the wholesale lumber business, you go out and, if you understand it, it's [fol. 1795] primarily a gamble in many cases. You take an order, and you hope to be able to put the order together.

Our feeling, to answer your question, is that we in our wholesaling activities have enough problems without being faced with even a few restrictions as to destinations, as to limitations on stopovers, and, particularly, where we may find ourselves with a car that is rejected, and then not be able to put it into some area without paying a combination of local rates, or whatever you railroad people call those things.

Q. Now, let's take Kansas City. As I understand, your Kansas City branch serves an area of 100 miles?

A. A hundred mile radius.

Q. What are your difficulties at Kansas City at the present time that you think will be improved should this petition be granted?

A. It wouldn't affect us a great deal in the Kansas City area. Our volume at Kansas City is considerably smaller than these other areas.

Q. Is there anything at the St. Paul warehouse that you care to comment upon specifically in that connection?

A. Only as it gets into certain parts of Wisconsin. I believe our St. Paul people travel over as far as Green Bay and that section.

Q. What restrictions do you have at your Baltimore, Maryland, and Elizabeth, New Jersey, warehouses at the [fol. 1796] present time that you think you won't have if this petition should be granted?

A. Frankly, I don't know just what effect it will have. Our Elizabeth warehouse, I understand there are certain restrictions on certain routings; whether they're pertinent to this case or not, I couldn't tell you, and—

Q. And your answer is—

Mr. Maguire: His answer is just what he said.

The Witness: —preventing us from putting a car, let us say, outside door frames in Chicago on the stopover basis and then routing on eastward to either Elizabeth or Baltimore. Whether that fits under this case or not—I'm not a traffic man, and I don't know anything about the rates or routings. I can't be too specific with you on that.

By Mr. Boe:

Q. Would you answer the same as you have given with respect to Baltimore as far as Elizabeth is concerned—Elizabeth, New Jersey?

A. Baltimore has the same innate problem, namely, facilitating certain inventory limitations in the warehouse whereby we can make stopovers between our Chicago warehouse, and I believe, I am told, east of Chicago we're permitted to make two stopovers. Is that correct?

Q. Well, I was wondering.

A. I don't know. I just posed the question because I don't know.

Q. I was just wondering whether your difficulties are east of Chicago or west of Chicago in connection with your [fol. 1797] Baltimore, Maryland, and Elizabeth, New Jersey, facilities. If I followed your testimony, you're not sufficiently informed as to what the difficulty is, if there is a difficulty, is that correct?

A. I understand that we have bumped into the problem on certain materials, primarily factory materials as distinguished from lumber, whereby our pricing basis is f.o.b. destination basis, so that the Chicago rate would not change the pricing of the product. It is the price for the product laid down at Elizabeth, but on certain origins and certain routings, where we may have to divide between two mills here on the coast, we cannot do that.

However, I do not know whether that is pertinent under this case or not.

Mr. Boe: That's all I have.

Mr. Rockwood: May I examine, Mr. Examiner? There was one subject which was covered that was not covered by this witness before.

Exam. Dishman: All right, Mr. Rockwood.

By Mr. Rockwood:

Q. One of the reasons you mentioned for wanting this additional route was that in the event there was an inspection and the car did not come up to grade, you wished to be able to divert the car to another destination, is that correct?

A. Yes.

Q. By whom is that inspection made?

A. It might be made by the PLIB, the Western Pine [fol. 1798] Association, or the West Coast Lumbermen's Association, or by one of several other private grading bureaus.

Q. To make that inspection, is it necessary to unload the car.

A. It is sometimes necessary to unload the car; sometimes it isn't.

Q. Can an inspection be made by the West Coast or the Western Pine without unloading the car?

A. We have had it where that's been the case, where they pulled enough material out so that the re-inspection would show clearly that the stock did not hold up.

Q. Well, that would be part unloaded. If the car is unloaded or even partly unloaded, do you know whether or not under the tariff you can then move that to another destination, other than at the local rate from the inspection point to the destination? Do you know?

A. I don't know.

Q. With your customers, do you have a lot of rejections?

A. For what reason? Do you mean cancellations? We have sometimes customers that will unfortunately cancel after the car is moving, loaded and in transit.

Q. That's not rejection because of the grade of the lumber, is it?

A. Generally, a cancellation because the market has gone off.

Q. And the customer walks out from under you?

A. That's right.

[fol. 1799] Q. And on your transit business, suppose you get a car rolling and you find a customer who says he wants the car, and then, before you can get it to his station, he walks out from under you and cancels because the market has gone off, can you divert that car to another destination? Do you know?

A. My understanding is we're permitted one diversion. Now, I don't in fact know that that is the case or not. I don't handle those details.

Q. All right. Then if one diversion is permitted on a transit car, it is diverted en route to the customer whom you expect to deliver it to, then that customer walks out from under you, you can't divert further without paying the local rate from the first named destination to the point where you can ultimately get rid of it, is that correct?

A. The few cases that we've had of that, we always find a few of those in a weakening market, our resort has not been so much to the railroads, but, rather, a hurry-up call to our lawyer's office to see what can be done.

Q. You have very few cases of that, do you not?

A. We don't have many of those cases.

Q. How many do you have in a year?

A. I couldn't give you a figure. I've seen times when the market has gone off and we have had four or five within a two or three week period.

Q. How many have you had in the last year?

[fol. 1800] A. I couldn't tell you exactly.

Q. Any in the last year?

A. We had some of those.

Q. How many? Where?

A. I couldn't tell you the particular destination point. We have had some. I think in most of the cases we've been quite fortunate to get another customer to take them.

Q. Well, isn't that the usual case, that, if you have trouble, you can usually dispose of the lumber by just making a deal with your purchaser to take it at some price adjustment?

A. We don't quite feel that that's the kind of business that we're in, that somebody is trying to beat us over the head to get a better price.

Q. I know it. I don't blame you, but—

A. We don't try to make any price cuts. When we do business, we do it on a rather high plane. We don't carry on that type of business.

Q. If there is an honest dispute as to quality, don't you try to make a price adjustment?

A. If there is a dispute as to quality, we're faced with one or two alternatives, generally speaking. The customer will reject the entire shipment, or he will settle for a price adjustment. There is no way to predict what the customers will do in that particular type of thing.

Q. And in cases where you've had rejections in the past [fol. 1801] year, what percentage of those cases was it necessary to move the lumber to another station other than that at which you thought you had your sale made?

A. We have found that it's about an even toss-up as to whether the customer will settle for a price adjustment, or whether he is going to reject the car.

Q. So that you had few problems of that nature, and of

those in at least several instances, you make an adjustment of price and forget about it, is that right?

A. I think you must take into account what the wholesale lumber business is.

Q. Never mind that. I'm—

Mr. Maguire: Let him answer your question.

Mr. Rockwood: Wait a minute. I haven't asked any such question about what the wholesale lumber business is.

Mr. Maguire: You don't know what his answer is going to be.

Mr. Rockwood: No, I don't, but I know that it's not going to be responsive. I have asked him for some specific information about his business, not the general nature of the wholesale lumber business.

Exam. Dishman: Do you understand the question?

The Witness: I understand the question. What I was going to say, I thought was pertinent to his question.

Exam. Dishman: All right, go ahead.

By Mr. Rockwood:

Q. I asked you for your own experience with rejected [fol. 1802] cars. That's all I'm asking about, Mr. Ruddick.

A. In 1954, we netted 1.98 per cent. I would like to have that stricken. I would not like to have that go in as a figure.

Q. It's in the record.

A. But that is what the wholesale lumber business netted. When you come down to answering your question about rejections, the matter of the small margins on which we operate in this wholesale lumber business is such that—

Mr. Rockwood: Mr. Examiner, this is not responsive. I'm asking him what he did, not the reason.

Exam. Dishman: Are you talking about your own business?

By Mr. Rockwood:

Q. Not the reasons, but what you did.

A. When we're faced with that, we try to move the car because the profit margin is so small that it—if the adjustment asked for is reasonable, we might just as well spend

the money which we're otherwise going to lose in trying to find another customer for it.

Q. Now, my specific question: In the matter of cars that were not accepted at the destination at the price at which you expected to sell it for, how many of those cars—what percentage of such cars were moved to another destination? I don't care why it was done, or what the profit or margin was, or anything. I want to know the percentage of those cars.

A. Speaking of cars that were rejected or didn't come up to grade?

[fol. 1803] Q. Which for some reason or other were not accepted by the customer at the price you expected to get, was the question.

A. Speaking of cars where we had cancellations because of price, and those are fewer in number than the ones that we have where we have a rejected car or a complained of grade on the car. Where we have a complained of grade on the car, I've found it necessary in most instances to move the material elsewhere.

Q. Those are the rare exceptions in your business?

A. Percentage-wise, yes.

Q. And most of them depend on the quality of the material of the car, which is determined by inspection, is that true?

A. Where we have a complained of car as to grade.

Q. And the grade is inspected by unloading or unloading it partly, if that is done, you're stuck with that car, and if you want to move it to somewhere else, you have to move it at a local rate, do you not?

A. I don't know about the local rate factor.

Mr. Rockwood: That's all.

By Mr. Musenbrock:

Q. Mr. Ruddick, I'm inviting your attention to the record last June. On Page 295 of that record, in answer to a question, you stated: "... I want no restrictions."

Then a question: "You want it ..."—and you were speaking of tariffs—"You want it wide open via any route anywhere in the United States?"

Answer: "Yes."

[fol. 1804] Question: "And anything short of that, you think is an outrage?"

Answer: "I think so."

And you also stated that your company is on record with the West Coast Lumbermen's Association and Western Pine Association as being against anything that is going to restrict the free movement of the wholesalers' activities.

Then in answer to a question by Mr. Lutterman for the Milwaukee, the question being on Page 289:

". . . Will you state whether or not, if joint rates were, as a result of this proceeding, ordered between the SP&S System and the Milwaukee via Spokane, which would apply generally on the lines of the Milwaukee east of Spokane and without restriction with respect to transit or diversion, whether or not this would be of benefit to you and your business."

And your answer was: "Very definitely. The margin of the wholesaler has been shrinking for the past year and a half, two years, and there must be no restrictions on the lumber wholesaler, in our opinion. We are against anything that is going to restrict the activity of the west coast wholesaler. . ."

Now, on the following pages—on the following page, 290, you stated: "Very definitely one of the finest markets we have is this section going north from Chicago." That was the midwest territory between the Dakotas and Chicago—

Mr. Maguire: Pardon me. What page are you reading from?

[fol. 1805] Mr. Musenbrock: 290.

By Mr. Musenbrock:

Q.-Now, what I'd like to know, Mr. Ruddick, is whether anybody on the Milwaukee Railroad gave you to understand that, if this complaint were successful, the rate that they would publish would be without restrictions of any kind, hobbling or curtailing or restricting diversion, transit, storing in transit, if you please, unloading in transit, or any

other privilege that's usually acquainted with transit? Did they give you to understand that there would be a wide open tariff with no restrictions?

A. Well, nobody on the Milwaukee Railroad or any other railroad gave me any such reason to believe that.

Q. Did you understand the question that Mr. Lutterman asked you, in that respect that we're now talking about, when you answered it? Did you so understand his question when he said, ". . . if joint rates were, as a result of this proceeding, ordered . . .", they ". . . would apply generally on the lines of the Milwaukee . . ." and ". . . without restriction with respect to transit or diversion . . ."

Did you understand his question to indicate to you that they would be wide open?

A. It would, as I understand it, make certain areas less restrictive. There are other restrictions which, I think, we can expound upon that we're not in accord with on rail movements. My answer to this gentleman on that question [fol. 1806] was that we would like to see all territories of the United States open to the free movement of our lumber and lumber products so as to facilitate certain marketing interests that we have, but we'd be bumping into restrictions along the line, and I reiterate we have written the Associations and expressed our feelings.

Q. Yes, you stated that in the last record. That's already in evidence.

Exam. Dishman: Mr. Witness, your position has not changed since last June?

The Witness: Our position has not changed one iota.

By Mr. Musenbrock:

Q. Now, in fact, as indicated from this testimony last June and as you've now stated that your position hasn't changed, you're not in the rate department, you're in the selling end of it, are you not?

A. That's right.

Q. So that any restrictions as to diversions or partial unloading or complete loading privileges, you get by word-of-mouth from your rate department, do you not?

A. We have no rate department.

Q. Or you get it from whoever does your routing?

A. We call the railroads to get the rate information.

Q. I see, but whoever does your routing tells you as to your restrictions?

A. That is correct.

Q. You don't know yourself as to anything of that kind?

[fol. 1807] A. No.

Mr. Musenbrock: That's all.

Exam. Dishman: Any other questions?

Mr. Torinus: I have one or two questions.

By Mr. Torinus:

Q. Mr. Ruddick, what proportion of your total volume of business originates on the SP&S System lines?

A. I couldn't say.

Q. You have no idea?

A. I have no idea. We get quite a few cars from down there in the SP&S area.

Mr. Maguire: Pardon me. I can't hear you, Mr. Ruddick.

The Witness: I say we originate quite a few cars in the SP&S area.

By Mr. Torinus:

Q. Do you know whether it's five per cent or 10 per cent of the total cars you ship east?

A. Any figure that I would give you would be a guess.

Q. You have no idea?

A. No idea.

Q. I think you testified last June that your business was heavier on the pine side than the fir side?

A. In dollar volume, yes.

Q. Now, how many cars—let me ask you this, Mr. Ruddick: Have you utilized the routes of the northern lines, the Great Northern and the Northern Pacific to Minnesota Transfer?

A. Yes, sir.

[fol. 1808] Q. How many cars within the last year have you stopped on either one of those lines to part unload?

A. No, I couldn't tell you that.

Mr. Torinus: I have no further questions.

By Mr. Golden:

Q. Mr. Ruddick, you indicated that you do a national business, I believe. Would that include the, oh, the New England states, the northeastern part of the United States?

A. We sell business up there.

Q. How many railroads can you name in that area that have no restrictions on routing?

A. I couldn't name very many railroads in the area, let alone what their restrictions are:

Q. Can you name one?

A. I think the Boston & Maine.

Q. Can you name one? Answer my question.

Mr. Maguire: Oh, there's no use getting hot about it.

The Witness: I don't know anything about the restrictions.

By Mr. Golden:

Q. Can you answer my question? Can you name one?

A. Restate your question.

Q. Can you name one railroad in the New England portion of the United States that has no restrictions on routing?

A. No, I can't name any.

Q. Do you do business in the southeastern part of the United States?

[fol. 1809] A. Yes, sir.

Q. Can you name one railroad there that doesn't have restrictions on routing?

A. No, I can't.

Q. Any in the southwestern part?

A. No, sir.

Q. Can you name one in the northwestern part?

A. I cannot.

Mr. Golden: That's all.

Exam. Dishman: Any other questions?

By Mr. Hillman:

Q. Mr. Ruddick, do I understand correctly that a large portion of your firm's sales move to your various warehouses?

A. That are sold by representatives of the warehouses.

Q. These warehouses are owned and operated by your own company?

A. That's right.

Q. And are the sales generally sales of material already in those warehouses, or are the sales more frequently made when the material arrives there?

A. It's split up pretty well between warehouse items, where the material is already in the warehouse.

Q. Perhaps it has been shipped from out of this territory?

A. And direct car business where we sell to the dealer trade.

Q. How do you make distribution at your sales points from your warehouses in Minneapolis and Chicago?

[fol. 1810] A. Some sorting in transit, and most of it by truck, our own truck there.

Q. What is—will you explain to me a little bit about this sorting in transit? Is this sort of a transit operation covered by the rules of the transit tariff?

A. I understand that it is.

Q. So that you can move material into your warehouse at St. Paul, for example, and hold it there for some time, and then move it out under a through route under transit?

A. Sometimes we re-sort the stock as to size and grade of the stock.

Q. Under the applicable transit tariffs, do you know whether you have any problem at all with respect to the question of accumulating proper credits on the outbound shipments to offset the inbound shipments?

A. I wouldn't know about that. The mill would know about that, the warehouse, that problem.

Q. Well, the transit operation that we've just been discussing, is that applicable to the warehouse that we've been talking of in St. Paul and Chicago?

A. Yes.

Q. But you don't know whether there are any restrictions as to what carriers might be able to handle the outbound shipments from the standpoint of your developing tonnage credits?

A. No.

[fol. 1811] Q. You don't come into that problem at all?

A. I wouldn't know as to the destinations either on the sales through our warehouse from our office out here.

Mr. Hillman: I have no further questions.

Mr. Maguire: We have no questions.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We will now take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will be resumed.

Let the record show that Mr. Engel is resuming the stand to complete his cross examination.

H. O. Engel having been previously sworn, resumed the stand:

Cross examination.

By Mr. Musenbrock (Continued):

Q. Mr. Engel, I think we were down to Des Moines when we left the record. Now, in the event that the Milwaukee was successful here, what rates and routes would you propose to Des Moines? I'm speaking of all points now on the SP&S. Let's leave the Santiam Branch alone, that is treating it separately, and include the whole thing in a lump.

A. You're speaking of lumber eastbound?

Q. Yes, my examination is only on lumber eastbound.

A. We have rates today via the GN and NP to the Twin Cities, thence the Milwaukee to Des Moines.

[fol. 1812] Q. Yes, sir.

A. What we propose is that we also have rates via Spokane and the Milwaukee to Des Moines direct, as well as

via Spokane and the Milwaukee to the Twin Cities, thence other lines that serve Des Moines, and, in addition to that, we would naturally want the application of rates beyond Des Moines that route through that gateway, and there are many rates applying via the routes into Des Moines and going on into the southeast, Chicago, and so forth. We also want those.

In other words, Des Moines is not the end of the line in such routing. We want that opened up to the same extent generally as rates from other points in the Pacific Northwest through the Twin Cities, or through our line to go beyond Des Moines.

Q. One of the examples beyond Des Moines would be the Wabash to St. Louis, wouldn't it?

A. Yes, sir.

Q. Now, to summarize it then, if you were successful here and these rates were put in as you explained, you would continue to have the present rate in connection with the northern lines, transfer, Milwaukee to Des Moines. You would also—you would, in addition to that, put in these other rates you specified over the transfer in connection with other Western Trunk Line carriers to Des Moines, and then you would have, you say, a direct rate to Des Moines.

What do you mean by that direct rate?

[fol. 1813] A. By direct rate, I mean a single line of the Milwaukee from Spokane to Des Moines via whatever line or combination of lines that is practicable from an operating or a shipper's specified standpoint that is available to us as a railroad, having lines both to Minneapolis and south from Minneapolis, or Minnesota Transfer, as it is called.

Q. When you speak of available lines, you mean lines of trackage of the Milwaukee, do you not?

A. On our single line direct routing, I'm talking about the Milwaukee only, yes, sir.

Q. That's right, so that the trackage could be the Aberdeen gateway south through Mitchell and Sioux City over to Des Moines, could it not?

A. Obviously.

Q. Now, would it be then the proposal of the Milwaukee to put in such rates and such routes to Des Moines, in-

cluding the route Aberdeen, Mitchell, Sioux City, Des Moines?

A. We would publish the rate to Des Moines, and that would apply via the Milwaukee Railroad. It wouldn't specify via Sioux City or any particular route into that point. It would say by the Milwaukee Railroad, and that could come in via Minneapolis. It could come south from there, if the train operations were such, the rates being common to both points, or at least not any lower to Des Moines than the Twin Cities.

Q. Well, then, the shipper could specify routing to Des [fol. 1814] Moines from a point on the SP&S via Aberdeen, Mitchell, Sioux City to Des Moines. He could specify that route over the Milwaukee, could he not?

A. Oh, he could. He doesn't usually do it.

Q. Not now. I'm assuming a rate though that's in effect if this proposal were sustained here. He could do it under such a rate published?

A. Surely. He could also specify via Minnesota Transfer too.

Q. Yes, we understand that. Now, in your Exhibit No. 10, Mr. Engel, Page 1, if you've got it handy—have you got it?

A. Yes, sir.

Q. From Pasco to Des Moines, you specified various routings. The first one is via the GN. That's 1939 miles via Route 46, and a reference to Route 46 is SP&S, Spokane, GN, Sioux City, Iowa, then the North Western. That's so from your exhibit, is it not?

A. Yes, sir.

Q. And as to the NP, 1998 miles, you use routing 115, which is via Spokane and Minnesota Transfer, Rock Island. That's so?

A. Yes, sir.

Q. Now, as to the Milwaukee, you get a mileage of 1761 miles or over 200 miles less than the Northern Pacific and approximately 178 miles less than the Great Northern from Pasco to Des Moines via the Milwaukee, and you use Route No. 1.

In referring to Route No. 1, it says SP&S, Spokane, [fol. 1815] Washington, CMStP&P from Spokane. What

route from Spokane via the Milwaukee did you use to get the 1761 miles?

A. The short published mileage in our distance table. Just how that routes, I couldn't tell you definitely, but it's the short published mileage.

Q. Well, it obviously wasn't the route over the transfer, was it?

A. It obviously was not.

Q. I figured it out myself. I won't have you accept it, but it's around 2,000 miles over the transfer, isn't it, Mr. Engel?

A. Looking at this routing of the Great Northern or the Northern Pacific, I would say that that is probably true.

Q. Somebody else figured this routing for you, this—to Des Moines from Pasco. You don't know what junctions they used to get 1761 miles?

A. The work was done in the office. I didn't figure it myself.

Q. Yes, but if you will please answer that, Mr. Engel, I'd like to get it on the record. As far as you are concerned, you don't know what junctions they used, whether they used Aberdeen and Mitchell and Sioux City, or what? You don't know?

A. Are you speaking now of the Milwaukee routing?

Q. Yes.

A. The 1 route?

Q. Well, you see the No. 1 route just gives the connection Spokane with the SP&S, and it doesn't give any junc-
[fol. 1816] tions on the Milwaukee. Now, when you speak of the GN or NP, it gives Sioux City for the GN, and you give Minnesota Transfer for the NP. So, we know what junctions were used there, but on the Milwaukee we don't know. Do you know?

A. Well, no, and I doubt if the clerk that checked that mileage could tell you because we have a published distance table that shows mileage via the short route from Mobridge, South Dakota, to Des Moines, Iowa, and that is computed—

Q. From Mobridge to Des Moines?

A. Yes, you see—

Q. Would that be a normal service route of the Milwaukee?

A. Let me explain. We have no through published mileage from Spokane to Des Moines. We have our distance table set up for lines west, which is Mobridge and west, and for lines east. So, our clerk who would compile this mileage would simply take the published mileage from Spokane to Mobridge out of one distance table. He would take the published mileage from Mobridge to Des Moines as it's stated and without any knowledge of how that is constructed, and that would be his through mileage.

Q. Well, as I understand your testimony, you testified that this was a serviceable route, the 1761 miles between Spokane and Des Moines via the Milwaukee. Now, if you don't know what junctions, Mr. Engel, that he used, how could you testify that it would be a service route over which you could haul lumber?

A. I submit that any published mileage is a service [fol. 1817] route. Whether it's as good a service route, or whether the trains operate over that route as a general matter, I couldn't answer that, no, sir.

Q. But that's just your opinion that any route that you can construct by adding trackage would be a service route? That's your opinion on that? That could be subject to differences though of opinion, could it not, Mr. Engel? Well, strike that. I'm not going to argue with you, Mr. Engel.

Now, how about these other points in this block from Pasco to these various destinations where they use Route No. 1 of the Milwaukee, such as to Sioux City, Council Bluffs? You couldn't say what the junctions were on those routes either, could you?

A. When you speak of junctions, you mean as converging—

Q. Your own junctions?

A. —converging main line points?

Q. Division points or interchange points on your own railroad?

A. They're not broken down on the distance table. They're published through mileages.

Q. But from this statement, I again ask you: You don't know whether those mileages were constructed over Aber-

deen, Mitchell, Sioux City to destination, or whether they were constructed over the Minnesota Transfer, or whether they were constructed over Chaska, or whether they might be constructed over some other intermediate point, do you?

A. All I can say is they are the short line mileage from [fol. 1818] Spokane to that point over the Milwaukee in combination with the route specified to points beyond.

Q. Well, what was the purpose then of this Page 1 in Exhibit 10 in comparing these with the GN and the NP routes?

A. The purpose was simply to take what I considered comparable tariff routes and to set down the mileages to reflect the difference in the length of the haul.

Mr. Maguire: Mr. Examiner—

By Mr. Musenbrock:

Q. Coupled with—

Mr. Maguire: Just a minute, please. I wonder if I could ask one question just for clarification on that. Do you object, Mr. Musenbrock?

Mr. Musenbrock: No.

Mr. Maguire: When you say comparable routes, do you mean short line distances via the other railroads computed in the same manner from the same class of tables that was used in the case of the Milwaukee? Is that what you refer to there?

The Witness: In all cases, they would be the short line mileages from junction to the particular point.

Mr. Maguire: Without regard to whether it's a lightly traveled route or a heavily traveled route?

The Witness: Without regard to whether it's a service route or not.

Mr. Rockwood: Could I ask one question for clarification? On both the Great Northern and Northern Pacific [fol. 1819] from Spokane, the short line from Spokane to Minnesota Transfer is over the main lines of those carriers, over which their heavy traffic moves, their manifest train moves between Spokane and the transfer, isn't that true? The short line is the main line?

The Witness: I don't know how they route their traffic.

Mr. Rockwood: That clarified it for me. Thank you.

Mr. Maguire: You can clarify your clarification later on, Mr. Rockwood.

By Mr. Musenbrock:

Q. So far as the NP route is concerned in that example we gave to Des Moines, you know that that's the actual route of movement? That it's NP to the transfer and Rock Island to Des Moines? You know that that's being used, don't you?

A. I assume it is.

Q. And there's other railroads that go to the transfer—from the transfer to Des Moines in connection with the NP that would use such a route?

A. Some of them are longer too than the Rock Island.

Q. That's correct, but they're actually in use?

A. Surely. We serve—

Q. But this Route No. 1—

Mr. Maguire: Just a moment. I think Mr. Engel hadn't quite finished.

Mr. Musenbrock: I think he had, my question.

The Witness: Well, you said there were other routes. [fol. 1820] I said that we also operate other routes.

By Mr. Musenbrock:

Q. No. I speak only of the NP route that you specified here. That is No. 115, and that's all, and you had answered that.

Now, as to Route No. 1 that you specified for the Milwaukee, which doesn't give these intermediate junctions, you compare that with an actual service route of the NP, not knowing whether traffic would move over such a route. Isn't that so?

A. When you say "over such a route", you mean the Milwaukee route?

Q. The Milwaukee route however your clerk compiled it, but you don't know?

A. No. As I said before, I don't know how the trains actually operate.

Q. And you don't know whether it would operate over Route No. 1, do you, after they leave Spokane?

A. I would like to say this, Mr. Musenbrock: As a general matter, in rate statements, and I believe the Commission takes cognizance of it, you use the short line distance. Now, there is also a difference between a short line distance and the short tariff route.

Now, I selected the Milwaukee, and I took their published mileages, and I took what I thought was a representative tariff route, and I took their published mileages. That's as far as I could go. How they actually handle it, I [fol. 1821] don't know. I don't know whether the Northern Pacific, for example, handle their business via a longer route because of lesser grades or something. I don't know that.

Q. Well, to the extent—strike that a moment.

You said that there are other routes to Des Moines over the Twin Cities that would be longer than Route 115, which is 998 miles via the NP. I think you made that statement. You so did, did you not?

A. I did what?

Q. You made a statement that there are routes to Des Moines via Minnesota Transfer, in connection with the NP connecting with other railroads at the transfer, longer than the route here in connection with the Rock Island?

A. Yes, I understand there are.

Q. That's right, and one of those routes might be the route of the M&StL from the Twin Cities?

A. And also the Milwaukee.

Q. And also the Milwaukee down the river, Mississippi River. That's correct, isn't it? Is that right?

A. Via different routes, yes.

Q. So that, is it not true, if this application were granted and the Milwaukee put in the tariff a rate that would apply over the route of 1761 miles between Pasco and Des Moines, the Milwaukee could haul the lumber to Des Moines over that, as you term it, service route in preference to the transfer?

[fol. 1822] A. I didn't say whether it was a service route. I didn't say I knew how the trains were operating. I said that was the short line mileage between those points.

Q. You gave the opinion that in your estimation every route compiled like this is a service route?

A. Well, yes. It's an available—it's a possible route, that's right.

Q. So that, if this tariff were put in force, a shipper at Pasco could move a car of lumber to Des Moines via the 1761 mile route single line Milwaukee out of Spokane?

A. He certainly could. It would make an economic route.

Q. More economical than Minnesota Transfer with the Milwaukee and M&StL, or Milwaukee all the way to Des Moines, would it not?

A. I don't know about more, but, if measured on a pure distance basis, it would be more economical.

Q. The Milwaukee route via the single line of the Milwaukee route via the transfer to Des Moines, as you estimate it, is around 2,000 miles. You'd be saving close to 300 miles, would you not?

A. That's correct.

Q. And in all probability, if the traffic were sufficient from out here on the SP&S, as the evidence shows here, it's substantial, this 1761 mile route would not only be a service route, but it would be an actual route of movement, wouldn't it, to Des Moines and east?

[fol. 1823] A. That is true, and I believe there would be other routes that would be still shorter than the Milwaukee through Aberdeen.

Q. But the Milwaukee route through Aberdeen would compare very favorably with those routes, and whichever route was used as a comparable short line route would not move through Minnesota Transfer, would it?

A. In this day of fast train operations, I believe most of our trains will run direct into Minneapolis. We don't allow for these stops and breakups, but, honestly, I can't say whether we would use this route through Aberdeen and down from Aberdeen or not.

Q. You have also an interchange with the M&StL at Chaska, Minnesota, which by-passes Minnesota Transfer, doesn't it?

A. Yes, sir. We compute it almost the same. I believe our division is the same.

Q. Now, assuming that the Milwaukee would publish such a tariff, with this routing available to the shipper via Aberdeen and Mitchell, the car, however, is destined to,

we'll say, Minburn, a local point on the M&StL about 15 miles north of Des Moines. How would you move that?

A. If the rates were established as we propose, I believe we've got the rates from our own origins via the Twin Cities and the M&StL, and, if this is a local point on the M&StL, then we—if we had the additional rates, the same as the GN and the NP have and you people, we would route it via Minnesota Transfer, or Chaska, whichever is [fol. 1824] suitable from the transportation department's standpoint.

As far as I can see, that would be the established routing to this point, and that's the way the traffic would move.

Q. The shipper has the right under the law to route his movements. Now, he would have the right to route this movement over the line of the Milwaukee from Aberdeen south through Mitchell, and you yourself termed it an economical, efficient route. Now, assuming the Milwaukee would haul that car from Pasco destined to Minburn, Iowa, over the Aberdeen-Mitchell route to Des Moines, where would you transfer that car to the M&StL for delivery to Minburn?

A. The present—I can simply go on the existing tariffs as a basis. Now, if we would put these rates in to this local point in the same manner as we have from our own origins via Chaska, then we would deliver it to you. The shipper, should he route it via our line down from Aberdeen, he'd be subjected to a combination rate, and I just can't understand why he'd ever do that.

Q. We're talking about a tariff that you would put in if your application is successful, that would have rates published in the same manner as are the rates of the GN and NP.

A. They have the routing to the transfer. We're asking for that too. We would have the rates with your line as we have from our territory in the Pacific Northwest gen- [fol. 1825] erally via the Minnesota Transfer. It's just as simple as that.

Q. Well, if it's that simple, then you are in effect saying that you're going to restrict the Milwaukee's route in connection with other railroads, especially the M&StL, I'm speaking of, to the transfer and to Chaska. Is that so?

A. Now, let me explain a little further. If there are other routes, which are presently applicable with the M&StL, into this territory, I do recall that we have some rates via Aberdeen and the M&StL, and to that extent we would also have the Aberdeen gateway, but, if our present application of rates to this Minburn, Iowa, is via the transfer, it is reasonable to assume—and assuming also that the GN and NP did not have rates via this Dakota gateway, Dakota junction—it's reasonable to assume that we would also apply it in the same manner that the GN and NP have.

That is the whole contemplated effort here, to have the same opportunity as the GN and NP to this territory with all lines, including the M&StL.

Q. I'm trying to square your testimony right now with what we have been listening to and, as I have read this record, from the commercial witnesses that they want additional territory on the Milwaukee in which they can sell their cars. Now, if they want that additional territory on the Milwaukee, I assume your business will increase if their business increases.

How would you haul the car from Pasco to Des Moines [fol. 1826] if you had the volume of business, as these witnesses testified to? You certainly wouldn't take it to the transfer, would you?

A. There we come right back to the actual operation.

Q. That's right, and the reason I'm insisting on this, and I've spent a lot of time, Mr. Engel, and you can appreciate why. Any business that you by-pass through Aberdeen and Mitchell to Des Moines cuts us out of the transfer business.

Now, if you would file a tariff restricted to Chaska and the transfer as interchange points with these other Western Trunk Line carriers, there would be nothing to prevent you thereafter opening up new routes from Pasco to Des Moines via Aberdeen-Mitchell, would there?

A. New routes via our own line?

Q. That's right.

A. Well, our proposal contemplates rates from Spokane via the Milwaukee to Des Moines. Now, that traffic is going to be moved via whatever is a satisfactory route from our transportation department's standpoint.

Q. All right. Now, let's go back. I think I can button it up now in a couple of questions. You call that an efficient route by way of Aberdeen-Mitchell. You did that some time ago, did you not, to Des Moines?

Mr. Maguire: I don't know that the witness did.

Mr. Musenbrock: Yes, he did.

Exam. Dishman: Well, the witness will answer. Did you? [fol. 1827] The Witness: I didn't say it was an efficient route. I said it was an available route.

By Mr. Musenbrock:

Q. And an economical one?

A. Economical route from a distance standpoint.

Q. An economical, serviceable route? That's correct?

Mr. Maguire: From a distance standpoint. Let's get it correctly stated.

By Mr. Musenbrock:

Q. From an economical standpoint?

Exam. Dishman: Is that what you said, Mr. Engel?

The Witness: That's what I said.

By Mr. Musenbrock:

Q. So that the Milwaukee, for a car destined to Des Moines, could with economy route that car down through Aberdeen and Mitchell to Des Moines?

A. I believe so.

Q. Now, at the same time that car was billed out of Pasco to Des Moines, there was another car by the same shipper containing the same commodity that was moved out destined to Minburn. Now, how would you move that Minburn car? You just stated you would move your Des Moines car via—or that it would be economical to move it via Aberdeen and Mitchell. Would you find it just as economical to move the Minburn car the same way?

A. The Minburn car would move according to the tariff route as published, and I would assume that, if our present

rates to Minburn apply via the Minnesota Transfer gateway, then it would necessarily move that way.

[fol. 1828] Q. We don't know what your tariffs will contain when they're filed, and neither do you, Mr. Engel. Presumably, they will contain all available routes. Now, as to junctions, we don't know. Isn't it barely possible the Milwaukee will include in that new tariff junction with the M&StL at Des Moines for traffic destined to points like Minburn, Grinnell, Newton?

A. It's not reasonable to assume that at all because our existing rates don't apply that way.

Q. You don't have any rates now that you're asking for here. All you've got now are rates to local points on the Milwaukee, and that is all, with no diversion privileges of any kind.

A. We have rates from this entire origin area on our line to Minburn, Iowa, on the M&StL, and it is entirely reasonable to assume that the rates that we are going to establish from the Oregon Electric, SP&S, via Spokane, where we receive it, to these destinations on other lines, will follow the existing pattern of the rates that we have from Spokane itself. Now, it's just as simple as that.

Q. Yes, but there's one element in that, when you give a comparison of rates off of your line, that's local business off your line. Aren't you losing sight of the consideration that this will be competitive business with the GN and the NP off the SP&S? Is it necessarily so that you will file the identical same kind of tariff?

A. I think your company would insist that you get that [fol. 1829] traffic at the transfer, rather than at Des Moines where you would be short hauled, and we would be agreeable to that.

Q. Well, now, wait a minute. That's your present opinion. We could insist, but would the Milwaukee have to give us what we insist upon?

A. Our complaint very definitely states that we are seeking rates to and via our existing eastern gateways. Now, we would certainly not be keeping faith if we didn't put you people in to the same extent as you have with the GN and NP. That's what we're seeking.

Q. Well, I'm not going to prolong this record. It's in a

state of flux. So, it depends upon a meeting of the minds at that time, and not by anything we can say here. Is that correct?

COLLOQUY BETWEEN COUNSEL

Mr. Maguire: Just a minute, Mr. Engel. Mr. Musenbrock, I take it that it might be helpful to you, that Witness Draver, the Traffic Vice President of the Milwaukee, and also by statement of Counsel, it was announced that the present open routing via all Western Trunk Line connections through the so-called eastern gateways as described in the complaint would remain open, and that we're willing—for the sake of Counsel as well as the witness, we're willing that that condition be attached as one of the conditions to the granting of this order.

So, it does not leave it to the whim of the Milwaukee as to whether you are being short hauled.

Mr. Musenbrock: Well, Mr. Maguire, the retention of the [fol. 1830] present gateways doesn't enter the question because there is no prevention on the Milwaukee putting in new gateways.

Mr. Maguire: But the thing is you still have the shipper who controls the routing, in the first place, and your railroad, which is in a very strong—just as strong solicitation position as we are in SP&S territory, which is very active and very efficient out there, can get routing for yourself through the transfer.

Mr. Musenbrock: I hope our solicitation force is, but, if there is a new available route, single line Milwaukee, Spokane, to Des Moines, with the whole southeast and east open for diversion, with a short line route from Aberdeen south, that might be a potent weapon in the hands of the Milwaukee to by-pass the Minnesota Transfer in connection with M&StL business.

Mr. Maguire: Well, there's another thing. There's a question of law in that situation, and I feel justified in talking about it, and that is, before we can put in a short haul route, you have to concur in that. You may insist upon the other routes. You don't have to concur in a short hauling route.

Mr. Musenbrock: Well, Mr. Maguire, is my railroad in a position to insist upon anything other than what we have now?

Mr. Maguire: Well, you're certainly entitled to insist upon wide open routing through the eastern gateways that are now available via the other routes from the SP&S, and we certainly don't think that you'll go to sleep on that, that [fol. 1831] you will supinely join us in another route which will short haul you. I think that's a question of law there, rather than a fact.

Mr. Musenbrock: Well, it is possibly, but the open routing south from Aberdeen through Mitchell, it's very obvious, if you want to look at it, that the Twin Cities gateway is going to die on the vine on the southeast business.

Mr. Maguire: I think you're unduly apprehensive.

Mr. Hillman: May I ask a question for clarification, Mr. Maguire? I'd like to ask you this question with respect to the statement of Mr. Draver that you just quoted, and that is this: Assuming that your proposal is granted, and that ultimately—we can't say for certain at this time, I grant you—but ultimately a tariff route is published via the Milwaukee south from Aberdeen, which would avoid the Minneapolis-St. Paul gateway, would you interpret Mr. Draver's statement to keep free and open routing for the Western Trunk Line carriers to include the establishment of interchange with the M&StL and the Chicago and North Western between Aberdeen and Des Moines?

Mr. Maguire: Well, the situation that you pose and ask me, Mr. Hillman, is a good deal like one of Grimm's Fairy Tales, where everybody was broken up because they thought if the young couple got married and their child went down to draw a glass of beer from the keg downstairs, and the axe was up there, it might fall down and kill the child.

You've got too many ifs in that question.

[fol. 1832] Mr. Hillman: Gee, I'm sorry, Mr. Maguire, I just don't see the connection.

Mr. Maguire: You think it over.

Mr. Musenbrock: I have nothing further of Mr. Engel.

Exam. Dishman: Are you through?

Mr. Musenbrock: Yes.

Mr. Maguire: I wonder, Mr. Examiner, if it might perhaps give my friends over there some ideas on further cross examination, if, after each one of these gentlemen cross examine Mr. Engel, if I could have redirect upon that cross examination.

Exam. Dishman: All right.

Mr. Maguire: I think it would be easier to follow, and I have just a couple of questions.

Redirect examination.

By Mr. Maguire:

Q. Now, with regard particularly to the lumber business, Mr. Engel, the lumber movement, who controls the routing, that is, the gateway through which the shipments move? The railroad, or the shipper, that is, where there are various alternative gateways available?

A. The shipper does.

Q. And then, regardless of the distance via the Aberdeen gateway to some of these points in Iowa that Mr. Musenbrock was concerned about, if the shipper designated Milwaukee, Minnesota Transfer, M&StL, would the shipper pay any more money than he would through the Aberdeen gateway?

[fol. 1833] A. It would be the same rate.

Q. It would be the same rate?

A. Yes.

Q. So that, if the shipper should so route those shipments, would we have any control about whether it moved Aberdeen—through Aberdeen or not and thus short haul the M&StL, or would we be obliged to follow the routing designated by the shipper?

A. Yes, sir, we would.

Mr. Maguire: That's all I have.

Mr. Torinus: I have some questions on cross that are related somewhat to Mr. Musenbrock's questions and Mr. Maguire's redirect.

Exam. Dishman: All right, proceed.

Cross examination.

By Mr. Torinus:

Q. Mr. Engel, when you testified in response to a question of Mr. Musenbrock's with respect to rates from points on the SP&S to Des Moines, Iowa, and you would expect to publish those rates, if you were successful in this case, SP&S, Milwaukee, Minnesota Transfer, thence various Western Trunk Lines beyond to Des Moines, and you would expect to retain your present routes to Des Moines in connection with the Great Northern and Northern Pacific via Minnesota Transfer, you would also expect to apply rates to Des Moines over route SP&S, Spokane, Milwaukee direct, you used the term "direct", if I understood you correctly, as meaning via the single line of the Milwaukee [fol. 1834] beyond Spokane?

A. Yes, sir.

Q. And when you used that term "direct", you didn't mean necessarily the shortest route, the shortest direct route from Spokane to Des Moines?

A. I meant via the Milwaukee Railroad itself.

Q. So that, when those rates—so that, should those rates become effective, SP&S, Milwaukee direct to Des Moines, if I understand your testimony, you would be able under that rate application to handle a shipment from an SP&S origin beyond Spokane over the main line of the Milwaukee to Minnesota Transfer, thence Milwaukee to Des Moines, or over the main line of the Milwaukee to Aberdeen, thence Aberdeen, Mitchell, Yankton, Sioux City, Des Moines, or over a number of other conceivable routes embracing your line, between Des Moines and Spokane, over this network of lines, branch lines that you have south of your main line, isn't that correct?

A. That's absolutely correct.

Q. In other words, at the present time, your routing with respect to shipments originating on your own railroad from points in the Pacific Northwest to Des Moines is wide open, is it not, insofar as transportation over the Milwaukee Railroad is concerned?

A. If you mean, we don't enter a pocket on our line from

our own origins, that's correct. We can get out of it via the [f 1835] regular established routes.

Q. What I mean is: You do not have any restrictions in routing over the Milwaukee Railroad from your own origins to Des Moines, Iowa?

A. No, we do not.

Q. And you would expect, if you were successful in this case, to publish similar unrestricted routing in connection with traffic originating on the SP&S?

A. Definitely.

Q. And that absence of restrictions, insofar as the movement over the lines of the Milwaukee is concerned, would apply to shipments originating on the SP&S, Spokane, moving via the Milwaukee Railroad to points beyond your own terminals, isn't that right? Isn't that what you would intend to do if you were successful?

A. Yes, sir. We would open up that entire territory.

Q. So that, under the routing as you envision it, should you be successful in this case, a shipper could present a car on the SP&S, for example, bill it to a point such as Canton, South Dakota, and divert to Duluth, Minnesota, couldn't he?

A. To Duluth?

Q. Yes, sir.

A. I'd have to check that one. It seems like that's quite a bit out of route. I wouldn't know about that.

Q. You wouldn't know that for sure. Well, how about [fol. 1836] Green Bay, Wisconsin?

A. It's on a direct line. Canton is intermediate. I would say we could most certainly do it. In other words, any point in a direct line—that's one of the advantages of the shippers, of being able to route through this territory and be able to get out beyond to any point directly intermediate, where it's directly intermediate.

Q. Well, you don't contend that Canton, South Dakota, would be directly intermediate from Spokane to Green Bay, Wisconsin, via the short route, do you, over your railroad?

A. Well, a short route and an intermediate route are not synonymous. In other words—

Q. In other words, you would make it intermediate from

a tariff standpoint, even though it might be far from intermediate as a matter of geography, is that correct?

A. If it's intermediate, it's intermediate.

Q. You would, under your routing in the tariff, with your absence of restrictions in the tariff routing, that would permit you to reach Canton, a reconsignment point, even though it might not be directly intermediate via the short route from Spokane, let's say, to Green Bay?

A. The short route doesn't necessarily govern. If it's intermediate in a reasonably direct route, we would permit the diversion.

Q. Your answer is "Yes", and you would permit that even [fol. 1837] though it were a considerable distance off your main line?

A. Yes, sir.

Q. To the entire United States in a direction generally easterly or southerly of Canton, South Dakota?

A. Yes, sir. All lines do that.

Mr. Torinus: That's all I have.

Mr. Boe: I have a question along that same line.

Mr. Maguire: I have no questions on Mr. Torinus' examination.

By Mr. Boe:

Q. Mr. Engel, as I understand it, from points in the state of Washington short of SP&S, at the present time, your company publishes rates to, we'll say, Des Moines, Iowa, that apply either via the Aberdeen-Sioux City gateway or via Minnesota Transfer. Am I correct in that?

A. You're speaking now of cars to Des Moines and you're questioning me as to whether the rate applies via Sioux City or via the transfer?

Q. That's right.

A. Without looking at the tariff, I don't believe there is any specified routing between those two points. So, I would say that that is a reasonable assumption, yes, sir.

Q. Would that also be true with respect to Cedar Rapids? Are your tariffs wide open so that on an unrouted shipment from a point on the Milwaukee, originating on the Milwaukee in the Pacific Northwest, the Milwaukee could

determine whether or not to move it via the Aberdeen-
[fol. 1838] Sioux City gateway or Minnesota Transfer?

A. I'm sure they could to Cedar Rapids, yes.

Q. Would that also be true as far as Davenport, Iowa, is concerned?

A. Yes.

Q. And Rock Island, Illinois?

A. Yes.

Q. Moline and East Moline, Illinois?

A. Yes, sir.

Q. Would that likewise be true as far as Ottumwa, Iowa, is concerned?

A. I believe so, yes.

Q. What about Kansas City, Missouri? Are your tariffs wide open so that you can originate lumber on your line in the Pacific Northwest going through Kansas City and south? Are your tariffs open now so that you could route that shipment via Aberdeen-Sioux City, Marion and Cedar Rapids, Ottumwa, as against the Twin Cities? Can you route them both ways as far as your tariff is concerned?

A. It depends on where you go to in the southwest. I'm not sure about whether there is or isn't some higher rate via the transfer today on through down along the river there to certain points. I believe there is an arbitrary on that route so that to some of the southwest territory, the Minnesota Transfer gateway is closed. At least, it used to be that way. I'm not positive about that.

[fol. 1839] Q. Well, now, let's take a shipment that stops at Kansas City from a point on the Milwaukee in the state of Washington, or Oregon, or Idaho. Does that shipment—is it restricted on the movement through Aberdeen, Sioux City, Marion, Cedar Rapids gateway as against Twin Cities?

A. I believe we have Fourth Section there. There is higher rated territory intermediate.

Q. I understand that. I was just wondering whether your tariff was—

A. I'm not positive without checking, sir.

Q. You think you have Fourth Section relief?

A. I believe we do on that.

Q. So, if your assumption is correct and you have two routes today, that you may solicit with respect to, on traffic moving to Kansas City from the Pacific Northwest, is that correct?

A. If my assumption is correct, that would be correct.

Q. And wouldn't you solicit the same thing with respect to origins on the SP&S with regard to a route that specified Milwaukee, Kansas City, and no other lines? Wouldn't you solicit it if you had both routes available?

A. We would endeavor to secure as long a haul for our line as possible. The matter of service and the matter of solicitation all enter into it. Whether we get it or not is the big question.

[fol. 1840] Q. But your recollection or assumption is that today you have two routes from the Pacific Northwest to Kansas City. My question merely is that, if you're extended the right to publish rates from the SP&S to the same territory, wouldn't your policy be the same, that you would still hold available those routes?

A. If we have it from all origins, I would assume we would have it from SP&S origins eastward through Spokane, yes, sir.

Q. Wouldn't the fact that you have today a through route, we'll say, to Chicago from points on the Milwaukee in the Pacific Northwest be an index for you to follow with respect to an extension of Milwaukee service to points off the SP&S? Wouldn't you follow the same general pattern with respect to all traffic?

Mr. Maguire: Well, Mr. Examiner, I don't like to interfere with Counsel's examination, but it does seem to me that that same question about following the same pattern has been answered a couple of times.

Exam. Dishman: I think it has been gone over.

Mr. Boe: I don't think it has been.

Mr. Maguire: Mr. Boe has asked it twice.

The Witness: I believe I've answered it.

Mr. Boe: I haven't with respect to the territory east of Chicago.

Exam. Dishman: Well, go ahead, Mr. Boe.

By Mr. Boe:

Q. My question now is with respect to the territory east of Chicago. As I understand your proposal here, it [fol. 1841] isn't limited to the area west of Chicago. Am I correct in my assumption that your proposal here is to get rates wide open from SP&S points to points east of Chicago, as well as west of Chicago?

A. You're absolutely right.

Q. All right. Would you answer my question then?

A. Your question, it seems to me, was whether we would operate both routes, through Sioux City, as well as through Minnesota Transfer.

Exam. Dishman: Will you follow the usual pattern?

The Witness: There's no restriction in the tariff. The route is simply the Milwaukee Railroad.

By Mr. Boe:

Q. And the routes are available today in connection with the origins that might be made available to the Milwaukee on the SP&S, is that true?

A. Yes, sir.

Mr. Boe: Now, those are all the questions I have along that line, but I do have some question with respect to new matter.

Mr. Hillman: I'd like to ask Mr. Engel a question. Did you want redirect examination?

Mr. Maguire: No, there's nothing so far as Mr. Boe's examination is concerned.

Exam. Dishman: You can go ahead, Mr. Hillman.

By Mr. Hillman:

Q. Mr. Engel, now that it's been established with some certainty that the routing south of Aberdeen is presently [fol. 1842] used and would be used in conjunction with any SP&S traffic you might obtain through this proposal, may I ask you whether you construe Mr. Draver's statement, with respect to the free and open routing which is to be granted the Western Trunk Line carriers, to include the

opening of joint rates through Aberdeen for that traffic from the SP&S territory, which might otherwise—I shouldn't say "otherwise"—but which might avoid moving through Minnesota Transfer because of this new available route via the Milwaukee?

A. I can make the same answer that I did to Mr. Musenbrock. If we had routing today, or if the GN and NP had routing via Aberdeen, South Dakota, it's reasonable to assume that we would follow the same pattern from the SP&S points as from our own.

Q. That then would result in traffic moving south from Aberdeen with the Western Trunk Lines being cut out of traffic which might otherwise move through Minnesota Transfer, is that correct?

A. It would result in routing via Aberdeen and the Chicago and North Western to the destination territory where they have such rates today, which would eliminate the Minnesota Transfer gateway.

Q. But it would eliminate the Chicago and North Western from quite a few of the destination points which it does serve via Minnesota Transfer today?

A. Yes, and it would be a longer haul. It wouldn't neces-
[fol. 1843] sarily eliminate it. It might duplicate it.

Q. You would establish an interchange with the Chicago and North Western at Aberdeen?

A. To the extent that we have it from our own origins.

Q. To the extent that they have free and open interchange with you today through Minnesota Transfer?

A. We would accord the lines—

Q. The answer to that is "No", isn't it?

Mr. Maguire: No, it isn't.

Exam. Dishman: What is it, Mr. Engel?

Mr. Maguire: There isn't any answer yet.

The Witness: I have simply to say that to the extent that the GN and NP have routing generally east of the Twin Cities, we would accord the C&NW the same; we want no more, but, if the Aberdeen route is open to points on the North Western down in there, to that extent we would also make available that routing.

By Mr. Hillman:

Q. But the answer to my question as to whether the Chicago and North Western would have the same type of free and open routing from Aberdeen with respect to routes used by the Milwaukee south of Aberdeen, the North Western today has from Minnesota Transfer, the answer to that specific question would be "No", is that correct?

A. We don't propose to open up any more application of rates than the other lines have. We are agreeable and it's our whole purpose to get equality of rates in this matter [fol. 1844] and accord the Western Trunk Lines equality treatment.

Q. I realize the point you're making, and, of course, you are referring to traffic patterns which are presently established and with which there are cases with which the Chicago and North Western is not particularly happy, but we're now referring to a possible change of traffic pattern in which the Chicago and North Western feel that we are in a strong position to lose traffic which we presently obtain, but, as regards this traffic which the Chicago and North Western handles through Minnesota Transfer, I think that the answer that you have to necessarily give the question is clear at this point, but I just want to make it clear that that is the problem, that the traffic patterns will change in the future from those which here today are established.

Mr. Hillman: I have no further questions.

Mr. Maguire: Was that a question or a statement or what?

Mr. Hillman: It was—

Mr. Maguire: You not being under oath, we will not pay any attention to it.

Exam. Dishman: Is there any redirect examination on this?

Mr. Maguire: Yes, on Mr. Hillman's cross.

Redirect examination.

By Mr. Maguire:

Q. Mr. Engel, while Mr. Hillman was trying to get you to say "No", if the North Western has any routing out of Aberdeen at the present time in connection with any other railroad, they will have it in the future, is that right, with [fol. 1845] either the Milwaukee or any other railroad?

A. We don't expect to disturb that at all.

Q. Yes, and now as to the relative length of hauls or the relative transportation conditions encountered by the North Western, if they solicit and gain access to the Aberdeen gateway, or whether they gain it through the Minnesota Transfer gateway, it is entirely a matter of geography which you're not attempting to answer, am I right about that?

A. That's right.

Mr. Torinus: I'll object to Mr. Maguire leading his expert witness on redirect examination. He has asked two questions—

Mr. Maguire: I'm through leading now.

Mr. Torinus: —both of which suggested the answer. I object to it.

Exam. Dishman: We have a very competent witness on the stand. I don't think he can be influenced.

Mr. Maguire: I can't tell him anything.

Exam. Dishman: Did you answer the question?

Mr. Torinus: He tried to.

The Witness: I've lost the question.

Mr. Maguire: He's answered it.

The Witness: I answered Mr. Maguire's question.

Exam. Dishman: All right. Is there further cross examination?

Mr. Golden: I have some.

[fol. 1846] Cross-examination.

By Mr. Golden:

Q. I understand that you expect to open up on traffic which would be moving off the SP&S to your system. Is that a correct summation of your entire statement here this afternoon?

A. Yes, sir.

Q. Would the same thing be true as to Kansas City?

A. Yes, sir.

Q. Council Bluffs?

A. You bet.

Q. Let's take a car now, a transit car, that's moving from any point on the SP&S System, and it's moving through Granger, Iowa. Now, the seller or the owner of the car finds a buyer that's about, oh, 10 miles out from Des Moines on the M&StL. What will he do with that car?

A. Where is the car when he finds this buyer?

Q. Oh, he's moving through, say, Granger, which is just outside of Des Moines.

A. And it's on the Milwaukee?

Q. It's on the Milwaukee. He finds a buyer on the M&StL about 10 miles from Des Moines.

A. What will we do with it?

Q. What will you do with it?

A. We'll do with it just whatever the shipper tells us to do with it.

[fol. 1847] Q. Haul it up to the transfer, give it to the M&StL?

A. Now, if the shipment is out of route, we'll tell him that the rate doesn't apply via the transfer, and that he's got to pay a combination rate, but he'll understand that, if he has a firm sale there. I don't quite follow you.

Q. He's in a little bit of a pocket down there?

A. Well, certainly. If he's out of route, he's in a pocket.

Q. All right. Let's take a car over your line of railroad from a point on the SP&S down toward Council Bluffs, say, to Portsmouth, and the seller finds a buyer at a point out of Council Bluffs on the Omaha, a local point on the Omaha. What do you do with that car?

A. If there is no through rate, the shipper will route it via the best combination rate that he can figure.

Q. In other words, he's got another pocket down there?

Mr. Maguire: Not necessarily. He didn't say that.

The Witness: It depends on whether he has a routing via some junction beyond.

By Mr. Golden:

Q. He doesn't have one, does he?

A. Well, Mr. Golden, there are routes, joint through rates to some points.

Q. Well, here's something: If you were successful in this case, and this car originated at a point on the SP&S and you took it at Spokane, and it's moving down toward Council Bluffs.

A. I didn't say that we were going to confine our rout- [fol. 1848] ing through Minnesota Transfer. I said that it is reasonable to assume that to the extent that we've got routing today via the eastern gateways, that we will also provide that same routing from SP&S origins. You ask me if we'd do it via Council Bluffs or via Des Moines. It all follows the same pattern.

Q. In other words, if the Omaha would short haul themselves—if the Omaha Railroad would short haul themselves down to Council Bluffs, you would make an agreement about that? Is that true? Is that what you have in mind?

A. Subject to the concurrence of other lines who would join with us.

Q. The same thing would be true as to the M&StL? If they would short haul themselves to haul this car to Des Moines, you would agree to that?

A. I can't see why we shouldn't.

Q. All right. Let's take a car that's moving down toward Kansas City, say, it's at Liberty, Missouri. The car has originated on the SP&S, and the seller finds a buyer, oh, 15 miles or so out of Kansas City at a local point on the Rock Island. Can he get that car over there?

A. We have joint rates to points on the Rock Island. I'm not sure that they apply to all points like Kansas City, but we have a complete line of rates via Council Bluffs and the Rock Island to all that territory.

Q. Would you expect the Rock Island to make a rate [fol. 1849] with you over Kansas City from this point on the SP&S, if you're successful in this case?

A. I don't know what they would expect.

Q. If the Rock Island did not do that, if they insisted on holding this to the Minnesota Transfer, they'd be short hauled to that extent?

A. They are doing it today. As I said, we've got joint rates via the transfer and via Council Bluffs, both, and they're not confining it to any gateway with us. They are happy for us to route traffic into Council Bluffs for the entire southwest territory, not only on their own line, but on their connecting lines.

Q. Do you think they'd be happy to take this car down to Kansas City when they now have an opportunity to get it at Minnesota Transfer?

A. They do that too. There are plenty of alternative routings with these carriers.

Q. That's true, but at the present time they would take that car at the transfer, wouldn't they?

A. They'll take it where the shipper routes it.

Q. If the Rock Island would not make a rate with you, however, over Kansas City from points on the SP&S, the shipper would be in a bit of a pocket when he got down toward Kansas City with that car, wouldn't he?

A. He's definitely in a pocket today, but, what we are [fol. 1850] proposing is to open—

Q. Just a minute. Answer that question.

Mr. Maguire: Let him finish his answer to the question.

By Mr. Golden:

Q. He'd be in a pocket, wouldn't he?

Mr. Maguire: Just a moment.

Exam. Dishman: Let the witness explain what he means by a pocket. Go ahead, Mr. Engel.

The Witness: The shipper today off the SP&S is definitely in a pocket. If we get our application of rates and follow the existing pattern of normal rates, he will have open via Kansas City the entire destination territory of the Rock Island.

By Mr. Golden:

Q. Of the Rock Island. They will make rates over Kansas City from SP&S origins?

A. They do; they do.

Q. Do they?

A. You bet they do.

Q. You have rates on SP&S traffic now?

A. We have them from our own origins.

Q. To Kansas City?

A. Yes, sir.

Q. Well, that's a new one on me. Can you take a car from Sunnydale, Washington, on the SP&S in Washington, down to Kansas City at the present time in connection with the Rock Island?

A. I said that they have rates today from our origins. We don't have them on the SP&S, and the shipper is in a pocket definitely.

[fol. 1851] Q. You're talking about something that I'm not talking about at all. I'm talking about the SP&S cars, cars originating on the SP&S System, or the Oregon Electric, or the Oregon Trunk. I'm not talking about cars that originate on your line in Washington.

A. My entire testimony with respect to this exhibit is that the rates go to this—

Q. I'm not talking about that.

Mr. Maguire: Just let him answer the question.

Exam. Dishman: Let him answer, and, if it isn't right, then ask him.

The Witness: It relates to the SP&S origin territory via Spokane. It's confined to this yellow area, and we cannot get beyond on the Rock Island or any other railroad.

By Mr. Golden:

Q. Right.

A. And he's definitely in a pocket when he gets in there on our line.

Q. And he will still be in a pocket if he gets these rates, if the other lines—the Western Trunk Lines do not short haul themselves to take that traffic from you at points other than Minnesota Transfer, isn't that right?

A. I can only tell you what they have done to date.

Q. Isn't that right?

A. What they have done to date.

Q. Wait a minute. Can you answer my question? Isn't [fol. 1852] that right? You can say "Yes" or "No".

A. I don't like to answer a question that is so unrealistic. They do make rates with us today via Council Bluffs, via Kansas City.

Exam. Dishman: And that affords them a shorter haul than if they got the traffic at Minnesota Transfer?

The Witness: Yes, sir.

Exam. Dishman: Isn't that what you want?

Mr. Golden: He's avoiding the question very obviously.

Exam. Dishman: It's on the record.

Mr. Maguire: You're asking a silly question. That's why it's an unrealistic question.

Exam. Dishman: We have enough on that. It's on the record now.

Mr. Rockwood: I think Mr. Maguire should apologize for the language he uses and as he characterizes it when he disagrees on it.

Mr. Maguire: I think I'll take care of my own manners, and you might watch yours.

Mr. Rockwood: I think he should apologize for what he said.

Mr. Golden: I'd like to say I resent the statement of the Milwaukee Counsel there that he just made.

Mr. Maguire: I object to the trouble this Counsel is giving the witness too. I think he's been very unfair with him, and that's why I'm very definitely objecting.

[fol. 1853] Exam. Dishman: I just want to get on the record what Mr. Golden is referring to by short hauling. Of course, it will be a shorter haul if they get it down there than if they got it at the Minnesota Transfer. Isn't that right?

The Witness: That's right, sir.

Exam. Dishman: Well, isn't that clear, Mr. Golden? Is that what you were trying to bring out?

Mr. Golden: I've been trying to make this point, to which the witness has been very evasive at the present time—

Exam. Dishman: It's on the record now.

Mr. Golden: At the present time, the Western Trunk Lines take traffic off the SP&S at Minnesota Transfer. They get a haul from that point very obviously. The witness has said that he would establish gateways at Council Bluffs, Des Moines, and Kansas City, perhaps others—I don't know.

Exam. Dishman: He would if they would join, and he said they are joining them. Isn't that your testimony, Mr. Engel?

The Witness: Yes, sir. They do from all origins.

Exam. Dishman: He says they are joining him and they will join him. If they don't join, why, that's something else again.

The Witness: That's right.

Exam. Dishman: You can't control that, can you, Mr. Engel?

The Witness: Not unless the Commission directs them to.

By Mr. Golden:

Q. They are not joining you at the present time on traffic that comes off the SP&S because you have no rates through [fol. 1854] those gateways, is that right?

A. We have no rates because the SP&S have not concurred in such rates. We would have them today if they would concur in them.

Mr. Rockwood: That is one which I think was a direct answer. In other words—

Exam. Dishman: Off the record a minute.

(Discussion off the record.)

Exam. Dishman: On the record. Go ahead, Mr. Golden.

Mr. Golden: I have no questions.

Mr. Maguire: I have just one or two questions following up Mr. Golden's cross examination.

Redirect examination.

By Mr. Maguire:

Q. Mr. Engel, questions have been raised about traffic originating on the SP&S. Now, suppose it is hauled by the Great Northern or the Northern Pacific to and through Spokane to the Minnesota Transfer, and the Milwaukee hauls it then from there down into Kansas City—down toward Kansas City.

When the car is at Liberty, Missouri, which Mr. Golden used as an illustration, what is the situation with the ability to divert onto any other line beyond?

A. There is no opportunity to because there are no rates to points beyond our railroad off the SP&S.

Q. That is, where we take it at the transfer?

A. Oh, wait, where we take it at the transfer?

Q. Yes.

[fol. 1855] A. Oh, I beg your pardon—I spoke too early. We do have routing; intermediate routing between the transfer and Kansas City to certain destination territory; yes.

Q. And also with regard to Portsmouth, Iowa, I believe that was—I'm trying to locate that again here—oh, yes, just east—a couple stations east of Council Bluffs, three stations east. Do we now on traffic originating on the SP&S, which we get from either of the two northern lines at the transfer, are there rates now beyond Portsmouth in the theoretical case that Mr. Golden mentioned via other lines, via connecting lines?

A. I don't believe we have routing from the Twin Cities on traffic received from the GN or NP through Council Bluffs. I don't think there's any line on that. The direct line there generally is CStPM&O and C&NW, but we haven't a direct line.

Mr. Maguire: That's all I have—wait a minute.

By Mr. Maguire:

Q. Now, just as a general rule of tariff construction, if any shipper is out of route at any time or anywhere, is he apt to be in a pocket so-called insofar as diversion to an out-of-line point?

A. He's subject to a combination rate on lumber or any other traffic.

Mr. Maguire: That's all. Thank you.

Exam. Dishman: Mr. Boe?

Cross examination.

By Mr. Boe:

Q. Mr. Engel, will you refer to your Exhibit No. 10, [fol. 1856] please?

A. Yes.

Q. Directing your attention on Pages 1 to 4, inclusive, where you refer in the second column on each page to destination points or points between points in the Pacific Northwest and other destinations, you refer, among others, to Fort Worth, Texas, and Oklahoma City, in each block.

A. Yes, sir.

Q. On each of those pages?

A. Yes.

Q. And you refer to various routes under the succeeding columns opposite Fort Worth and Oklahoma City. For instance, take the first block, via Spokane, Washington, GN. Opposite Oklahoma City, Fort Worth, you have 79. Do you follow me on that?

A. Yes, sir.

Q. Now, then, if you refer to Page 7 on your Route No. 79 to 87, which have reference, as I follow your Pages 1 to 4, inclusive, these several routes that appear on Page 7 of No. 79 to 87 take the routing opposite Route 79, SP&S, Spokane, Washington, GN, Sioux City, Iowa, CB&Q, Kansas City, Missouri, MKT of T.

What does the MKT of T stand for?

A. Missouri-Kansas-Texas of Texas.

Q. Is that correct? Is the Missouri-Kansas-Texas of Texas a connection of the Burlington at Kansas City?

A. I assume so. I think so.

[fol. 1857] Q. Should that not be Missouri-Kansas-Texas Railway? Aren't there two different railways? Missouri-Kansas-Texas and Missouri-Kansas-Texas of Texas?

A. That's probably correct.

Q. May we assume therefore that in connection with Routes 79, 82 and 85, in the first section on Page 1, to Oklahoma City, has reference to Missouri-Kansas-Texas Railway, rather than the Missouri-Kansas-Texas of Texas Railway?

A. I believe it's reasonable to assume that, yes.

Mr. Maguire: I think there's no question about that, Mr. Boe.

Mr. Boe: I just wanted to be sure.

Mr. Maguire: I think we may—I'm willing to stipulate that the words "of T" may be stricken because, according to the Guide here, the Missouri-Kansas-Texas of Texas is way down in the southern part of Texas. So, that's correct. I don't think it runs to Oklahoma City.

Mr. Boe: That's correct. I don't think it runs to Oklahoma City.

Mr. Maguire: And it doesn't run up to Kansas City.

Mr. Boe: Is that true as far as Fort Worth is concerned?

Mr. Maguire: No. It runs right through Fort Worth.

By Mr. Boe:

Q. So that, in connection with the reference to both Fort Worth and Oklahoma City, there should be no reference to M-K-T of Texas, is that true?

[fol. 1858] A. It's clear enough that it's the M-K-T itself that's the line from Kansas City, if that's what you mean.

Q. Well, I'm trying to find out what you mean. Did you mean M-K-T of Texas, or did you mean M-K-T—Missouri-Kansas-Texas Railway in connection with Route 79 and referring to Page 7?

A. I'm sure that these are M-K-T mileages.

Q. You did not mean to show any mileages with respect to the Missouri-Kansas-Texas of Texas?

A. Not south of Kansas City because they don't get in there. It's all one system though.

Q. Now, then, will you refer to Page 7 of your Exhibit 10 in reference to the Routes 91, 92 and 93, which you marked "Not used"? Can you say for clarification of the record why they were not used and what they referred to?

A. As I recall that, the exhibit was set up and then certain

points were deleted, and, rather than go back and renumber them, because we were in somewhat of a hurry, they just simply indicated that they were not used.

Q. Well, let me ask you this: Did they have reference to routes either from points on the SP&S, OT, or OE Railway to destination territory we're talking about here in this case?

A. I don't know.

Q. You don't know. Now, one other question, Mr. Engel, on this exhibit: You've shown routes on Pages 5, 6, 7 and 8. In looking through these routes, I notice none of them have [fol. 1859] reference to the Minneapolis, Northfield & Southern Railway Company, which operates in a portion of the territory that's involved here in this case. Was that an oversight, or was that done intentionally, as far as this exhibit is concerned?

A. The Minneapolis, Northfield & Southern is a relatively short rail line, and they do have—they do participate in some of the rates. As I previously testified, we selected what we felt were standard tariff routes. We couldn't begin to take all of them, or even a small percentage. We took what we thought were standard tariff routes, and, if we used the Chicago Great Western south of the Transfer, we wouldn't have the MN&S in here because they happen to have a routing with the Chicago Great Western.

The whole setup of these distances are relative. We didn't select the route to cut out any particular railroad. We selected them from the standpoint of standard tariff routes.

Q. Well, I'm asking the question simply because Minneapolis, Northfield & Southern Railway operates south of Minneapolis to Northfield, Minnesota.

A. That's right.

Q. And you know, do you not, that it forms a route in connection with railroads south of Northfield, both the Rock Island Railroad and the Great Western Railway Company?

A. I know that, and I'd like to have lots of rates with them. I'm perfectly satisfied to give them—

[fol. 1860] Q. But you didn't show them in your exhibit?

A. That doesn't mean that we don't want rates with them. We want the same application with them as the GN and NP have.

Q. Now, will you refer to Page 9, list of tariffs used in obtaining distances. You show quite a few routes in connection with the Rock Island on your exhibit here, and you list on Page 9 the tariffs used in obtaining distances.

Where did you obtain the Rock Island distances?

A. I'm sorry, unless it's in this Texas lines or Southwestern Freight Bureau tariff, that I can't answer that. If we have omitted a reference to the Rock Island distance table that was used, we certainly would like to have it added, and we will supply it.

Q. The question—

Mr. Maguire: Just a minute. Could that information be secured if it has been inadvertently omitted and supplied by Monday?

The Witness: Yes.

Mr. Boe: It's important to me because I want to know what mileage of the Rock Island is being used here.

Mr. Maguire: I can see your interest, and, if there has been an omission and it is not contained in this Southwestern Freight Bureau tariff mentioned here, we'll be glad to supply it.

The Witness: By the end of this hearing; not by Monday necessarily.

Mr. Maguire: Well, some time before the adjournment [fol. 1861] of this hearing. Would that be all right, Mr. Boe?

Mr. Boe: That's all right. I just want to know how I can check the mileages with respect to the Rock Island.

Mr. Maguire: Surely, yes.

By Mr. Boe:

Q. That's all I have with respect to Exhibit 10.

Now, Exhibit No. 11, and this exhibit, while I'm talking about it, was prepared before the Rock Island was made a defendant in this case, that's true, isn't it?

A. Yes.

Q. Now, referring to Page 5, under coloring syrup from East St. Louis to Vancouver, Washington—

A. Page 5, Section 2?

Q. Section 3.

A. Section 3, yes, sir.

Q. Route E—Note E and Note F, 27 and 28—can you refer to those?

A. Yes, sir.

Q. What is Note E, Item 27?

A. Well, the routes are shown. Number 27 is shown on Page 8, GM&O, Chicago, Milwaukee, Minnesota Transfer, GN, Spokane, SP&S, and 28 is GM&O, Chicago, Milwaukee, Spokane, SP&S.

Q. Now, there's another direct route between East St. Louis and the Twin Cities that you haven't mentioned there, namely, the Burlington, Rock Island—Burlington Railroad, Burlington, Iowa, Rock Island Railroad to the Twin Cities. That's true, isn't it?

[fol. 1862] A. Yes, there are many other routes.

Q. The Burlington, Rock Island route is at least as short as or perhaps shorter than the route you've shown there, is that not true?

A. That's true, and we used the same route up to the transfer as we did in this case, using Milwaukee, the net result of the comparison being substantially the same. This exhibit is pretty largely designed to show the comparison of those routes specified in some of the others, but their result would be substantially the same. We used relative routes.

Q. You're not intending, by showing the Routes 27 and 28, to mean that the GM&O to Chicago, CMStP&P to Minnesota Transfer, is the short route, are you?

A. No, sir, not at all, and not any intention to indicate that that's the only way the rates apply or will apply.

Q. Well, you can see the route that I've referred to, the Burlington from St. Louis to Burlington, Iowa, and the Rock Island from Burlington, Iowa, through the Twin Cities, is a shorter route than the Routes 27 and 28 you show here?

A. If you think so. I don't really know. I would also submit that the net difference from East St. Louis to Vancouver, following the same routing to the transfer would be substantially the same as shown. It's not necessarily the shortest possible route, but, rather, the relative routes of our line versus the others.

[fol. 1863] Q. Now, in connection with the information shown in the first five pages of your Exhibit No. 11, am I

to understand that the routes that you show there are not intended to be the only routes between the points shown? For instance, on Page 1 in your second block, you show railroads GN and CMStP&P.

A. Those definitely are the only railroads serving Lewistown, Montana.

Q. Well, as far as—I think maybe there are other points beyond—I guess a better example would be over on Page 2. Look at the last block there, Council Bluffs, Iowa. You've got origin shown in the Pacific Northwest, SP&S, OT and OE to Council Bluffs, Iowa, North Western, Council Bluffs, Iowa, CMStP&P.

There are other routes, are there not, to Council Bluffs, Iowa, than the one that you're comparing, the Milwaukee with the North Western?

A. Yes, sir, many other routes.

Q. The point that I'm trying to develop is that the routes that you show here, that you're comparing your line with, are not the only routes available to the destinations shown on these various pages that I have referred to, with the possible exception of No. 1?

A. No, they're not, and I believe in my direct testimony I explained that they were comparable routes via the routes of the GN and NP across the Montana-Dakota state line. [fol. 1864] I didn't compare, for example, the rates into Council Bluffs via Laurel and the CB&Q, and I tried to keep the comparison as much like for like as possible.

Q. Well, how do you account then for destinations east of Chicago like Detroit, Michigan, Pittsburgh, Pennsylvania? What routes do you show up to point of interchange in that connection?

A. I think we used the short route from the Twin Cities, and we used a constant line east so that they would be comparable routes. We didn't take, for example, the long route east of the Twin Cities, when we were showing the GN route, and then a short route east of Chicago when we were using the Milwaukee route. We tried to make the thing entirely fair and correct.

Q. Well, let me see. In that connection, did you get the distances from common origins, Klickitat, Washington, for instance, on the last block on Page 3, to Detroit, Michigan?

Did you take the route of the Great Northern or Northern Pacific to St. Paul or Minnesota Transfer versus the route of the Milwaukee to Minnesota Transfer, plus the same railroads beyond Minnesota Transfer to Detroit?

A. Well, just look at those now. There's Route 143, 144. On 143, we go SP&S, Spokane, GN, Minnesota Transfer, the CStPM&O, Chicago, and the NYC. That's one of the routes, and 144—

Q. Mr. Engel, my point is, whether east of the Minnesota Transfer you're using the same railroad?

A. Here we had in both cases—now, let's look at 210. [fol. 1865] I think we did. I think we tried to use the short line. 210—yes, we used the Milwaukee—210—there's a duplication of 201.

Q. Well, maybe we can shorten this up a bit.

Mr. Maguire: That 201, I think, should read 210, Mr. Boe, that second 201.

The Witness: Possibly. It's been so long now I've kind of forgotten just how we selected those.

By Mr. Boe:

Q. Well, I'm interested in knowing how we could check them. If we could check them from this exhibit or your references, that would be sufficient, but I can't tell—

A. The routes are complete except possibly for some errors that may have crept in here, and they should check on the basis of that complete routing.

Q. Well, let's take this one there we were talking about, Page 3. Let's follow it through from Klickitat to Detroit, Michigan, and tell us how we can check that route all the way through.

A. Well, assuming that you correct that exhibit that 201 on Page 13 should be 210, then you've got your complete routing, SP&S, Spokane, Milwaukee, Chicago, NYC. Now, the other routes shown, 143 and 144, are also complete, CStPM&O and the NYC beyond Chicago.

Q. So, can we assume then that all the routes shown on this exhibit are detailed by a reference from the number to the—

A. Yes; that isn't an assumption. That is intended to show that. It's supposed to show the complete route.

[fol. 1866] Q. It shows the complete route?

A. Yes, sir.

Mr. Boe: That's all I have.

Mr. Maguire: May I ask this, Mr. Examiner?

Exam. Dishman: Yes, Mr. Maguire.

Mr. Maguire: In connection with Page 13 of Section 1 of Exhibit 10, there are two route numbers, both 201, and one of them obviously, the one that immediately precedes Route 211, I think, should be 210, instead of 201. Can I have Mr. Engel check on that in the meantime so that the exhibit may be corrected before of this present session?

Exam. Dishman: You can do that, Mr. Engel?

The Witness: Yes, sir, I'd be happy to.

Mr. Maguire: That's fine then.

Mr. Boe: That's all I have.

Mr. Maguire: I have no questions on Mr. Boe's.

Mr. Musenbrock: I have just one or two, Mr. Examiner.

By Mr. Musenbrock:

Q. Mr. Engel, you and I have been talking about our lumber rates on our criss-cross here, what you said are the lumber rates and what you said the Milwaukee proposes to do. Would that be generally true as to commodity and class rates that you may put into effect in the event you're successful here?

A. No, sir; there is quite a marked distinction between the application of lumber rates eastbound and merchandise [fol. 1867] traffic generally. The routing east of the Missouri River on merchandise traffic generally is pretty wide open, and we—our proposal contemplates that same wide open application east of the Missouri River gateways, via your line and all the others as obtains generally today.

Q. Subject to the ability of the wide open routes on your own railroad?

A. I don't quite follow you.

Q. Well, where you have rates between points on your own railroad, local rates, on which we have spent all afternoon here, you at your own convenience move the commodity in whichever way is economical and efficient? You don't restrict yourself to one way of routing, one route?

A. There's no so-called internal routing on our road east of the Twin Cities.

Q. I'm not going to go into this. I want to button it up quickly, but, at the present time, from local points on your railroad, going to a local point or destination in Iowa, you use various routes at your own convenience, do you not? You can put them through the transfer, you can put them through Aberdeen, or whichever way you want.

A. We have various lines and branches going down.

Q. That's right, and you use them?

A. Yes.

Q. I think you testified to that for Mr. Torinus?

[fol. 1868] A. Yes, sir.

Q. Now, you would do the same on commodity and class rates, wouldn't you, from local points? That is, the same as you do it now from local points?

A. Surely, and may I say one thing more on that?

Q. Surely.

A. The routing, as I stated, on merchandise traffic generally east of the Missouri River is pretty wide open, and we've got routing via our line, M&StL, if you please, and back to our railroad.

Q. That's right.

A. And we would figure on that same application off the SP&S.

Mr. Musenbrock: That's all.

Exam. Dishman: Any more questions?

Mr. Torinus: I'd like to ask one with respect to that last examination of Mr. Musenbrock's.

By Mr. Torinus:

Q. Specifically, on class and commodity rate traffic with the M&StL, where it gets the haul now from the Minnesota Transfer to a point, let's say, five miles from Des Moines, under your proposal on this type of traffic, you would expect to handle the traffic from Spokane all the way to Des Moines? You'd have routes in any event which would permit you to handle the traffic all the way to Des Moines and interchange with the M&StL at that point, rather than Minnesota Transfer, isn't that correct?

[fol. 1869] A. We'd expect to handle it the way the shipper routes it.

Q. Well, you would have that route open all the way through to Des Moines on the M&StL? That would be open under your proposal?

A. Unless the M&StL restricted it.

Q. Your proposal though is to have such a route in the event your prayer is granted, which would short haul the M&StL on traffic which it now handles from the transfer, isn't that right?

A. The so-called wide open routing east of the transfer is pretty much of a reciprocal arrangement.

Q. You can answer that question "Yes" or "No", Mr. Engel.

Mr. Maguire: I think that the witness, Mr. Examiner, should be allowed to answer it in any form he wants, so long as it's responsive.

Exam. Dishman: Yes, you can make an explanation, rather than "Yes" or "No".

The Witness: I think it should be because—

By Mr. Torinus:

Q. Is your answer "Yes" or "No," first, before you make the explanation?

Mr. Maguire: I think the Examiner gave the witness the option of making the explanation.

Exam. Dishman: Let's don't go around like this. Go ahead and make your explanation.

The Witness: The routing, as I stated, east of the Mis-[fol. 1870] souri River gateways is pretty generally wide open, and it's a reciprocal arrangement. Now, the M&StL, when they have shipments from the GN or NP going to a point on our line, would short haul us at Wisconsin and Iowa destinations, and, if we should be successful in getting this routing, and the shipper specifies routing via some short haul junction and the tariff was as it is today, we would have that opportunity, but I believe that the matter of reciprocity would still result in giving that traffic to the other lines at the Twin Cities.

I've had some very serious experiences along that line, and they pretty well control it, if it's at all possible.

By Mr. Torinus:

Q. That's a long way of saying "Yes", isn't it, Mr. Engel?

Mr. Maguire: The answer speaks for itself, Mr. Examiner.

Mr. Torinus: I don't know whether he said "Yes" or "No" yet.

The Witness: The routing will be wide open.

By Mr. Torinus:

Q. Yes, the routing would be wide open and would permit you to short haul the M&StL on the traffic that I have described, is that right?

Mr. Maguire: Just a minute. That's beating around the bush on that.

Exam. Dishman: It seems to me that all these things are a matter of argument. They're in the record here.

Mr. Musenbrock: Well, we've got to make this of record if we're going to argue.

[fol. 1871] Exam. Dishman: I think it's already in the record.

Mr. Musenbrock: It is not as yet in the record. I haven't found it.

Mr. Maguire: Mr. Examiner, we don't need the argument in the record in order for Counsel to argue it later, and that is what this is consisting of.

Mr. Torinus: My point is: I've asked a simple question, and it can be answered "Yes" or "No", and I haven't got a "Yes" or "No" answer.

Exam. Dishman: Well, would it be a shorter haul than if it moved another way? Could you answer that, Mr. Engel?

The Witness: It could move both ways, Mr. Examiner.

Exam. Dishman: It could move both ways? Could it move a certain route and be a shorter haul than if it moved another way? Is that "Yes" or "No"?

The Witness: Yes, sir.

Exam. Dishman: Is that what you want, Mr. Torinus?
Mr. Torinus: If it moved—
Exam. Dishman: Isn't that clear?
Mr. Torinus: It's clear now, yes.
Mr. Maguire: All right, then.
Mr. Musenbrock: Is it clear? Did he answer "Yes" or "No" whether the Milwaukee could short haul the M&StL over Des Moines?
The Witness: Well, I—
Mr. Torinus: As I understood, the answer was "Yes".
[fol. 1872] Mr. Musenbrock: O.K.

By Mr. Torinus:

Q. That's right, Mr. Engel?
A. Routing being open, yes.

Mr. Maguire: Are you through, Mr. Torinus?
Mr. Torinus: I give up.
Mr. Maguire: I have one question.

Redirect examination.

By Mr. Maguire:

Q. Mr. Engel, on Mr. Torinus' question, under the wide open routing, can the M&StL short haul the Milwaukee and then give it back to them?
A. Yes.

Mr. Rockwood: Where?

By Mr. Maguire:

Q. Throughout all points east of the eastern gateways?

Mr. Rockwood: Let the witness answer.
The Witness: Via established junctions.
Mr. Musenbrock: I submit that's not in issue here. We're talking about traffic to or from the SP&S.
Mr. Maguire: I'm talking about that too.
Exam. Dishman: Mr. Rockwood said, "Where?" So, let's get an answer to the question.
Mr. Maguire: On traffic from the SP&S—

Exam. Dishman: Let Mr. Engel answer Mr. Rockwood's question as to where.

Mr. Maguire: Mr. Rockwood just interrupted before the [fol. 1873] question was asked.

Exam. Dishman: I know. He said, "Where?"

Mr. Musenbrock: I'm going to object on behalf of my client. My client can't control the SP&S traffic, so let him pick out a different guinea pig.

Mr. Maguire: You've bred your own guinea pig there.

Mr. Musenbrock: Oh, no. I didn't ask this question.

Mr. Maguire: Well, now, we'll clear the atmosphere. I'll reframe that question.

By Mr. Maguire:

Q. On traffic, if the same pattern of wide open routing on merchandise, class and commodity rates, would prevail on traffic off the SP&S that prevails on traffic generally east of the eastern gateways, are there routes possible and were there routes possible whereby, with the illustration used by Mr. Torinus, the M&StL also would be able to short haul the Milwaukee in that territory?

A. Yes, they would.

Q. Is that what you meant when you said that there is something reciprocal about it?

A. Exactly.

Mr. Maguire: That's all I have.

Mr. Rockwood: May I have an answer to my question? Where?

Mr. Maguire: I said in the territory east of the eastern gateways.

Mr. Rockwood: I know it, but I said where in the terri- [fol. 1874] tory east of the eastern gateways?

Exam. Dishman: Will you answer that, Mr. Engel?

The Witness: I'll have to consult the tariff to develop an exact and established interchange, but there are numerous of them, and it wouldn't take me very long, I'm sure. It would be possible, for example, on our routes via Spokane and the Milwaukee to the Minnesota Transfer for the M&StL to solicit that traffic and handle it via the M&StL to an interchange with us in Iowa, thence to our line. So,

they could short haul us out of the transfer on general merchandise traffic.

Mr. Rockwood: Well, do I understand, if the Milwaukee got that traffic out of Spokane and hauled it east under these wide open arrangements, that the SP&S could get a hold of that traffic and—

Mr. Maguire: The SP&S?

Mr. Rockwood: The M&StL—excuse me—could get a hold of that traffic and haul it for a while, and then hand it back to the Milwaukee and short haul the Milwaukee?

The Witness: Yes, sir.

Mr. Rockwood: That's all. Thank you.

Mr. Musenbrock: And that's short of the transfer? They couldn't control it west of the transfer? The M&StL couldn't? That's right, isn't it?

The Witness: That's right. The shipper controls it.

Exam. Dishman: Is that all?

[fol. 1875] Mr. Maguire: That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Hillman: Mr. Examiner, off the record, please?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

We will recess until Monday at 9:30 a.m.

(Whereupon, at 5:50 p.m., an adjournment was taken until 9:30 a.m., Monday, February 21, 1955, at the same place.)